

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40092
Docket No. MW-39393
09-3-NRAB-00003-060058
(06-3-58)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Manager B. Buss to perform Maintenance of Way work (operate hi-rail boom truck involved in steel bridge repair) on the Menominee drawbridge at Mile Post 84.91 in the vicinity of Milwaukee, Wisconsin beginning on December 2, 2002 through December 18, 2002, instead of Maintenance of Way Operator D. Johnson (System File C-53-02-330-02/8-00228-084 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Johnson shall now be compensated for one hundred ten (110) hours at his applicable straight time rate of pay and for eight (8) hours at his applicable time and one-half rate of pay.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Between December 2 and December 18, 2002, the Carrier assigned Manager B. Buss to operate a Bridge Inspection Vehicle (BIV) on the Menominee drawbridge at Mile Post 84.91 in the vicinity of Milwaukee, Wisconsin. The Organization filed the instant claim, alleging that Buss operated this piece of equipment to assist the Steel Bridge Crew in the performance of steel bridge modifications. The Organization argues that Buss is a management supervisor outside the scope of the Agreement and, therefore, he should not have been assigned work customarily and traditionally reserved to Maintenance of Way forces. The Organization stated during handling on the property: "On innumerable occasions the Carrier has brought down one of its own cranes to put up scaffolding and the System B&B Steel Crew then works off of the scaffolding." The Claimant, who performs Crane Operator work in connection with bridge and building maintenance and repair projects, should have been assigned to perform the work, the Organization asserts.

The Carrier argues that Buss is the operator of the Bridge Inspection Vehicle (BIV) and it has never been operated by Maintenance of Way forces. It further argues that Buss performed bridge inspection work which is not within the scope of the Agreement and any additional work which involved lifting persons or equipment was incidental thereto.

After careful review of the record in its entirety, the Board finds that the Organization failed to prove that the work falls outside the tasks permissibly performed by a management supervisor. On the contrary, the record established that Buss has been the only individual to operate this equipment since it was purchased by the Carrier and there is no evidence that any Maintenance of Way employee is trained or qualified to operate this piece of equipment.

To accept the Organization's position, the Board would necessarily have to find that the Carrier was obligated to utilize a different piece of equipment as well as scaffolding to perform the work. No such conclusion is warranted. The Carrier determined that the work at issue, which involved inspection and the modification of knee braces on the inside of a through truss, required the use of the BIV. That is a matter within the Carrier's sound managerial discretion.

Based on the record presented, the Organization failed to meet its burden of proof. Absent evidence that the work belongs under the scope of the Agreement, the Board must rule to deny the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of November 2009.