

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Wesley Miller, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned an employe junior to Assistant Foreman M. Marsillo to relieve Section Foreman Harry Bergren from December 10 to December 31, 1964, inclusive.

(2) Claimant M. Marsillo be allowed the difference between the rate of the section foreman's position on Section 26 and what he was paid at the assistant foreman's rate for eight (8) hours on each work day of Section Foreman Bergren's position for the period from December 10 to December 31, 1964, inclusive.

(3) Claimant Marsillo be allowed additional pay at the time and one-half rate of the section foreman's position on Section 26 for 35½ hours, which represents the amount of overtime worked on the section foreman's position during the period in question.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant M. Marsillo has established seniority in the various classes within the track sub-department and is regularly assigned to the position of assistant section foreman on Section 26. The claimant has a seniority date of September 22, 1953, as an assistant foreman, and his regular assigned work week is Tuesday through Saturday, with Sunday and Monday as rest days.

Foreman Bergren from Section 26, with a work week extending from Monday through Friday, was absent on vacation from the close of his work period on December 10, 1964 to December 31, 1964. Instead of assigning the claimant, the senior qualified and available assistant section foreman, to perform the duties of the regular foreman during his vacation absence, the Carrier assigned junior Assistant Section Foreman Cocchiarella, who has a seniority date in that class of July 7, 1955. Mr. Cocchiarella is also regularly assigned as an assistant section foreman on Section 26 with an assigned work week Monday through Friday (Saturday and Sunday are rest days). The excuse given by the Carrier for this violation of the claimant's seniority rights was that it would have been required to

December 10, 1964 - 6 hrs. 50 mins.  
December 11, 1964 - 8 hrs.  
December 12, 1964 - 5 hrs. 20 mins.  
December 13, 1964 - 2 hrs. 40 mins.  
December 15, 1964 - 9 hrs. 40 mins.  
December 16, 1964 - 3 hrs.

M. Marsillo filled his assigned position of assistant section foreman during the period December 10, 1964 to December 31, 1964, inclusive. In filling his assigned position, Mr. Marsillo was allowed payment of eight hours computed at the assistant section foreman's straight time rate on each of the fifteen working days occurring during this period, and, in addition thereto, was allowed payment of the following number of overtime hours computed at time and one-half rate:

December 15, 1964 - 3 hrs. 40 mins.  
December 17, 1964 - 4 hrs.  
December 20, 1964 - 10 hrs. 30 mins.  
December 26, 1964 - 2 hrs. 40 mins.  
December 27, 1964 - 3 hrs. 30 mins.

Claim was presented and progressed on the property in behalf of M. Marsillo for payment of the difference between the section foreman's rate and the assistant section foreman's rate during the period some time prior to December 10, 1964 when it was alleged Section Foreman H. Bergren was absent on account of illness and the vacancy in his assigned position was filled by A. Cocchiarella.

Claim was also presented and progressed on the property in behalf of M. Marsillo for payment of a total of 35 hours and 30 minutes computed at time and one-half the section foreman's rate, which represent the total number of overtime hours allowed A. Cocchiarella during the period December 10, 1964 to December 31, 1964, inclusive, while filling the position of section foreman.

The claim presented in behalf of Mr. Marsillo has been declined.

**OPINION OF BOARD:** A careful study of the Record convinces us that there is a substantial variance between the claim as discussed on the property and the one submitted to this Board. We are, therefore, compelled to dismiss the Claim without consideration of the substantive issues. See Awards 14135, 14298, 14607, 14747, 14878 and 15063.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1967.