



Award No. 18398

Docket No. MW-18630

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John B. Criswell, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it required or otherwise permitted Track Foreman R. R. Martin to suspend work during his regular assigned work hours and to perform service during overtime hours at his straight time rate of pay from September 30 through October 11, 1968. (System File A-9120/D-4884.)

(2) Track Foreman R. R. Martin now be allowed eighty (80) hours' pay at his straight time rate because he was not permitted to work his regular assignment for the ten work days from September 30 through October 11, 1968.

(3) Track Foreman R. R. Martin be allowed the difference between what he should have been paid at his overtime rate and what he was paid at the straight time rate for the service he performed from September 30 through October 11, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant R. R. Martin was regularly assigned to the position of track foreman on Mechanized Gang No. 943 Unit C. His work week extended from Monday through Friday from 8:00 A. M. to 4:30 P. M., inclusive of a thirty minute meal period. The claimant was assigned to this position in accordance with the applicable rules, including Rules 6(a) and 11 of Article 3 which read:

**"RULE 6.**

(a) New positions or vacancies on positions of higher rank than laborer shall be bulletined within ten days previous to or following the day such vacancies occur. Positions or vacancies of thirty days or less duration shall be considered temporary and may be filled without bulletin. Employees will not be permitted to work temporary positions or vacancies in classification where they hold sufficient seniority to entitle them to regular position."

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The second shift mechanized gang, designated as Unit I, Gang 949, was assigned 5:00 P. M.-1:30 A. M., including 30 minute meal period, with same work week assignment as Unit C, Gang 943 (hereinafter referred to as Unit C and Unit I).

The vacancy bulletin for foreman on Unit I did not develop an applicant therefor. There was also no regularly assigned relief foreman on this track division although such vacancy had been repeatedly bulletined.

When the first vacancy bulletin for foreman on Unit I did not develop an applicant, the vacancy was rebulletined, and to prevent delay in the establishment of Unit I, while the second bulletin ran its course, the Claimant temporarily worked the foreman vacancy for ten working days, September 30 through October 11, 1968.

In the absence of a regularly assigned relief foreman, the Claimant on Unit C was, in turn, temporarily relieved by the foreman on Patrol District Gang No. 351 with headquarters at Madill, Oklahoma, who, in turn, was temporarily relieved by the assistant foreman on Gang No. 351, and he, in turn, was temporarily relieved by a track laborer in District Gang No. 350.

**OPINION OF BOARD:** Claimant was a regularly assigned track foreman, working daytime hours Monday through Friday. His gang was engaged in the lining and surfacing of track. A second shift operation was established, Carrier tells us, "in order to secure greater benefits from the utilization of its mechanical track surfacing equipment."

It was designated Unit I, Gang 949, and the vacancy bulletin for foreman did not receive an applicant. There was no regularly assigned relief foreman on this division, Carrier says.

When the first bulletin for foreman did not have an applicant, it was rebulletined. During this period of delay made necessary by the second bulletin, the Claimant temporarily worked the foreman vacancy for ten days.

The claim is brought because of this temporary work.

The Carrier says the work was done — the temporary assignment accepted — voluntarily. The Organization says this has nothing to do with it, that the individual employee and the Carrier could not agree to violate the Agreement. We agree.

It is simply a question of whether this Agreement contemplated such action as the Carrier took. The Carrier contends that Article 2, Rule 15 approves:

"Employees assigned to temporary service may when released, return to the position and place from which taken, without loss of seniority."

It is apparent from this language that the Agreement intended employees might be assigned to temporary service, it also provides for the return to their position and protection of seniority.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 19th day of February 1971.