

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20130
Docket Number MW-19647

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(1) The Carrier violated the Agreement when it called and used Extra Gang Foreman M. B. Horn instead of senior Extra Gang Foreman J. R. Peyton to inspect track between Hearne and Dime Box, Texas on June 13, 1970 (System File MW-70-65).

(2) Extra Gang Foreman J. R. Peyton be allowed seven (7) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Section 1(i) of Article II, of the Agreement reads, insofar as here material:

Work on Unassigned Days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee. (Emphasis supplied.)

From our study of the record made on the property we find that the pivotal issue to be adjudicated in determining the merits of the Claim is whether under the factual situation presented Claimant was the "regular employee" within the meaning of that phrase as historically interpreted and applied by this Board and as generally understood in the industry. From the facts of record we find that Claimant was not the "regular employee".

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;

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

Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1974.