

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22533
Docket Number MW-22453

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Western Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier failed and refused to compensate Welding and Material Helper Roy Emerick at the Welding and Material Handling Foreman's rate of pay for services rendered on September 24, 27, 28, 29, 30, November 8, 9, 10, December 6, 7, 8, 9, 10, 27, 28 and 29, 1976 (System Case No. 10894-1977-BMWE).

(2) The claimant shall be allowed the difference between what he was paid at the helper's rate and what he should have been paid at the foreman's rate for the service he rendered on the dates specified in Part (1) above."

OPINION OF BOARD: Claimant substituted for the Foreman during his absence. Carrier does not believe he is entitled to the Foreman's rate because he "did not perform the duties which are the basis for the Foreman's higher rate."

The Board finds that claimant substantially performed the duties of the Foreman's position, and that substantial performance is all that is required. Therefore, the claim will be sustained except for September 24, 27, 28, 29 and 30, dates for which timely claims were not filed.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated.

A W A R D

30. Claim sustained, except as to September 24, 27, 28, 29 and

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By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.