

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26516

Docket Number MW-26235

Edward L. Suntrup, Referee

(Brotherhood Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Escanaba and Lake Superior Railroad Company

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

1. The Carrier violated the Agreement when it failed and refused to allow the employee* listed below holiday pay for Labor Day (September 5, 1983) (System File E&LS-24).

2. The claimants shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in Part (1) above.

*Ahlskig, Carl	Gibbons, Stanley	Orlando, William
Alsteen, Tracy	Grailer, James	Ostrowski, Thomas
Baille, Patrick	Hamm, Gaylord	Peak, Steven
Bauer, Anthony	Herlache, Dennis	Pieters, Greg
Bieber, William	Hogue, Orlo	Pinchart, Tracey
Borski, Leo	Janda, Ronald	Pizinski, Vincent
Brietrick, Scott	Jahnke, Donald	Pragacz, Stephen
Brush, Walter	Joly, Wayne	Regouski, David
Clancy, Daniel	Jose II, David	Schultz, Scott
Collard, Robert	Keiler, Richard	Schwartz, David
Collins, Francis	Krueger, Kirk	Skinkis, Kenneth
Connaher, Bruce	Kubiak, Donald	Smith, Gregg
Deffke, Michael	Kubiak, Noel	Sodlerberg, Kraig
Deffle, Thomas	Lasley, David	Tadisch, Michael
DeRoush, Robert	Last, Roy	Tappa, Gerald
Dettman, Brett	Leary, John	Taylor, Keith
Dettman, Bruce	Lesinski, Paul	Thibault, R.
Dettman, Douglas	Little, Tim	Tomazewski
Ducion, David	Maier, Thomas	Veldman, Walter
Erdmann, Wayne	Matz, Michael	Walinski, R.
Erickson, Thomas	Mevers, Terry	Walters, William
Fieck, Richard	Meyer, Mark	Wickman, Willis
Fieck, Robert	Monfils, Michael	Wood, James
French, Kenneth	Negro, Jon	Wroblewski, Ed
		Zemanovic, Mark"

OPINION OF BOARD: On October 17, 1983, the Organization's Assistant General Chairman filed a Claim with the Carrier on the grounds that it had been in violation of the National Agreement when it failed to compensate the Claimants for the Labor Day holiday on September 5, 1983. The Claimants in question were employees assigned to gangs working on the Green Bay to

Crivitz, Wisconsin rehabilitation project and also on the Michigan rehabilitation project. According to the original Claim filed the "employees were regularly assigned . . . to their respective positions which were created when forces were increased due to . . . (the) . . . respective rehabilitation projects." The Claim continued that ". . . none of (the claimants) were called back to work or hired to fill a position owned by another employee . . . (and) . . . they received compensation credited to the work days immediately preceding and following September 5, 1983. . . ."

When the Claim was denied by the Carrier by correspondence dated December 1, 1983, it did so on the following grounds:

" . . . (w)ork performed by (the Claimants) does not fall into the category of 'regular assignments' on this property. Each (Claimant) was hired as extra employee to augment the regular work force, and worked on an extra gang performing the insertion and various other related tasks in conjunction with the rehabilitation projects on the property. One of these projects has a signed agreement . . . wherein these employees are designed as 'assigned to extra gang service' with a 150 day probationary period"

The Carrier is a regional shortline operating in the States of Wisconsin and Michigan with a normal compliment of some eight to ten Maintenance of Way Employees. When the Milwaukee Road abandoned trackage between Green Bay, Wisconsin and Ontogagon, Michigan in 1980, this Carrier began operations on that trackage as a shortline. In June of 1983, the Carrier signed an Agreement with the Organization which covered only the rehabilitation work to be done on part of the former Milwaukee Road tracks in the summer and fall of that year. The Claimants in this case are employees who were hired by the Carrier under that Agreement to perform track roadbed and crossing repairs.

A study of the language of the Agreement under which these Claimants were hired warrants no other conclusion except that they were not regularly assigned employees as contemplated by the National Agreement. They were "extra gang" employees as the Agreement between the parties signed on July 15, 1983, explicitly states. The employees were hired on a temporary basis for seasonal work and at the completion of the project their positions were to be abolished. The Claim, therefore, must be denied.

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

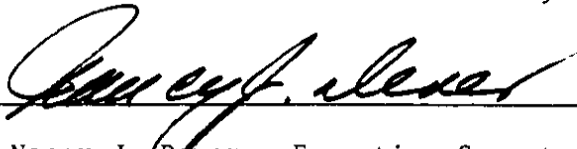
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.