

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior Trackman D. E. Vigil to perform overtime service on March 4 and 31, 1984, instead of using Trackman-Truck Driver C. A. Gutierrez, who was senior, available and willing to perform that service (System File 140-33-8419/11-1580-220-410).

(2) Claimant C. A. Gutierrez shall be allowed seventeen (17) hours of pay at his time and one-half rate in effect on the claim dates."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The relevant facts are not in dispute. On March 4 and March 31, 1984, Signal Maintainer J. Gutierrez called Trackman D. E. Vigil to assist him in certain repair work. Trackman Vigil, however, is junior to the Claimant. The Organization contends that the Claimant, pursuant to Rule 33(1), should have been called to perform the work.

The Carrier essentially contends that Signal Maintainer J. Gutierrez did not have the authority to use a Trackman to assist him in the performance of Signalmen's work and it had no knowledge (at the time) of this action on his part. Therefore, the Carrier argues that under these particular circumstances, it should not be held responsible for a voluntary and unauthorized act.

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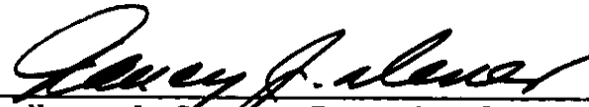
Award No. 27183
Docket No. MW-26382
88-3-85-3-299

Based on the facts presented in this case, we agree with the Carrier. Clearly, what was done here by the Signalman was without authority or the knowledge of the Carrier. Moreover, the record indicates that the work in question belongs to the Signalmen Craft. Thus, if in fact the Carrier would have authorized the work to be done at the time and the manner that it was performed, it would have been assigned to the senior available Signalman.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.