

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29984
Docket No. MS-28855
93-3-89-3-269

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Nickey L. McCoy
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"The dispute in question is the matter of the railroad co. using trackman to preform (sic) the work of a foreman. In January 1987 I was cut off as track foreman, at this time I could not hold a job on my seniority division as a foreman or trackman so I was furloughed. at a later date the railroad co. began a ditching gang, a trackman was put in charg (sic) of this gang he was in charge of this gang with no direct supervision of a foreman. It is my contention that this gang required a foreman because of the duties that were preformed (sic), such as puting (sic) out orders, clearing trains through orders and operating a highrail. When I became aware (sic) of this I filed a clame (sic) for the time this gang worked and I did not. Claim No. 870593, to this point the claim has been turned down by the railroad co., but I feel that this is a valid claim and ask for your consideration."

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 employe 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.

On January 27, 1987, the Carrier used a trackman to perform various duties which included securing train orders, operating a hy-rail vehicle, and flagging operations for the safety of a contractor working on the Carrier's right of way. The Organization filed a claim on behalf of the furloughed Claimant contending that

the work performed on the date in question should have been performed by a foreman, in this case the Claimant.

The Carrier denied the claim contending that the work performed did not necessitate the employment of a full time foreman. The Organization responded with an appeal contending that the Carrier violated Rules of the Agreement.

The Carrier once again denied the claim contending that the Organization failed to meet its burden of proof. After several more appeals the Carrier responded that the only way the work involved would have required utilizing a foreman is if there were other employees to supervise and the only restriction the Carrier found in using a person to perform flagging duties was that it must be "a reliable person."

This Board has reviewed the record in this case and we find that the claim must be denied because the Claimant has not come forward with sufficient evidence to substantiate the claim.

The Claimant has not demonstrated any Rule violation since no work Rule prohibits the Carrier's action in this case. The restrictive language that the Claimant wants this Board to read into the Agreement simply does not exist. The claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.