

Form 1 **RECEIVED** NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

Award No. 30634
Docket No. MW-29319
94-3-90-3-224

G. L. HART

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the Carrier assigned Track Inspector C. H. Puckett instead of Laborer R. A. Perry to perform laborer's work (removing snow from switches and lighting switch heaters) from the West switch at Jonesboro through the East switch at Brookland, Arkansas on March 5, 1989 (System File MW-89-23-CB/481-8-A).
- (2) As a consequence of the aforesaid violation, Mr. R. A. Perry shall receive four (4) hours of pay at the laborer's time and one-half rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 therein.

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

On Sunday March 5, 1989, a Track Inspector, who had been called out by the Carrier, cleaned switch points and lit switch heaters between Jonesboro and Brookland, Arkansas. Subsequently, a claim was filed on behalf of the Claimant, primarily on the basis of Article 11, which states:

"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."

The Organization contends that if the work had been done during the regular workweek, it would have been done by the Claimant. As a result of the work not being part of any other assignment or being done by an extra employee, it must be done by the regular employee.

The Carrier defends the use of the Track Inspector on the basis of Article 42, which states in pertinent part:

"ARTICLE 42

TRACK INSPECTORS, TIE INSPECTORS, TRACK AND
TIE INSPECTORS AND THEIR ASSISTANTS

SECTION 1. Carrier may establish one or more positions classified as track inspector, tie inspector or track and tie inspector, and one or more positions classified as assistant track inspector, assistant tie inspector or assistant track and tie inspector. A position classified as assistant track inspector, assistant tie inspector or assistant track and tie inspector may be assigned to work with each position classified as track inspector, tie inspector or track and tie inspector.

SECTION 2. These positions may be assigned duties of inspecting tracks and ties and making such repairs to tracks, switch lights, etc., that time will permit. They will be required to carry certain tools with which to tighten bolts, drive spikes and make other repairs required. When defects are found that cannot be repaired by the inspector, he will arrange with foreman for prompt repairs."

The Carrier asserts that the Track Inspector cleaned the switches and lit the switch heaters in connection with his track inspection.

It is difficult for the Board to accept the Carrier's defense. While Article 42 allows Inspectors to do track work, it must be incidental to their regular track inspection duties. It seems self-apparent that a Track Inspector would not be doing regular or normal track inspection duties on a snowy Sunday afternoon at 4:00 P.M. When it snows significantly, switches must be cleaned and heated. There is little mystery about it, and traditional "inspection" is hardly necessary. The Carrier cannot use track inspection as a pretense to justify the use of a Track Inspector to do what--from all indications in this record--is Laborers' work. If the Board was convinced that the work was done in the ordinary course of the Inspector's duties, the Carrier's defense would be plausible, but under these circumstances, it was not.

In view of the foregoing, the claim is sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.