

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31211
Docket No. MW-31635
95-3-93-3-654

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation Inc. (former
(Louisville and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned a B&B employee to operate a tie handler to install crossties on the main line (Mile Post C-208) on September 8, 9, 10, 14, 15, 16 and 17, 1992 instead of assigning Track Subdepartment Machine Operator D.L. Hammac [System File 6(46) (92)/12(93-10) LNR].
- (2) As a consequence of the violation referred to in Part(1) above, Track Subdepartment employee D.L. Hammac shall be allowed seventy (70) hours pay at his straight time rate of pay and three (3) hours pay at his overtime rate of pay."

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 herein.

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

This dispute involves solely employees working within the Scope of the Maintenance of Way Agreement.

The Carrier assigned a bridge tie handler with an Operator to replace some 1100 concrete ties following a derailment that occurred four days prior to the first date of the seven dates claimed. The Operator had seniority only as a Bridge and Building Sub-Department employee. It is the contention of the Organization that only Trackmen can perform track work and that only Bridge and Building employees can perform Bridge and Building work, even for a very short period of time.

To establish such rigid limits as to whom can do what and when, a rigidly constructed Classification of Work Rule would have to be in force or an overwhelming demonstration of a system wide practice. Neither is present in this dispute. See Third Division Awards 29957, 27015, 26460, 26320, 24739, 22761 and 21495.

The claim is therefore declined because the burden of proof of a Rules violation has not been satisfied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.