

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31831
Docket No. MW-31321
96-3-92-3-928**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Eastern Lines)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Bridge Inspector B. Wheeler and Assistant B&B Inspector R. Holt to perform overtime service in conjunction with the work performed by the link belt crane between Grosbeck and Corsicana on October 30, 1991 instead of assigning B&B Foreman D.J. Zhanel and Assistant B&B Foreman R.K. Stagner to perform the work (System File MW-92-13/MofW 154-504 SPE).

(2) As a consequence of the violation referred to in Part (1) above, B&B Foreman D.J. Zhanel and Assistant B&B Foreman R. K. Stagner shall each be allowed six (6) hours' pay at their respective time and one-half rates."

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 were given due notice of hearing thereon.

Claimant D. J. Zhanel had established and held seniority as a Bridge and Building (B&B) Foreman and Claimant R. K. Stagner had established and held seniority as an Assistant B&B Foreman and were regularly assigned in the above positions at the time the dispute arose.

On December 6, 1991 the First Vice Chairman presented a claim to the Carrier's Superintendent alleging that the Claimants were entitled to six hours each at their respective time and one-half rate of pay for not being allowed to perform their duties on an overtime basis. The letter made the following factual claims:

"On October 30, 1991, Bridge Inspector B. Wheeler and Assistant B&B Inspector R. Holt were used to pull drift working in connection with the link belt crane between Grosbeck and Corsicana.

Mr. Wheeler and Mr. Holt worked six hours overtime in performing this work.

Mr. Zhanel and Mr. Stagner had been performing this work on October 28 and 29, 1991 and reported for this work on October 30, 1991, but were told that their services would not be needed for this work."

The Organization argued that by failing to utilize the proper employees to perform this work, the Carrier violated articles of the current Agreement, including but not limited to: Article 2, Seniority Rules; Article 6, Seniority Rosters; Article 8, Promotions and Filling of Vacancies; Article 16, General Rules; and Article 41, B&B Training Program. Such violation caused the Claimants a loss of wages and work opportunity.

Under date of January 13, 1992, the Carrier's Superintendent denied the claim, stating:

"Investigation does not reveal that Mr. Wheel[er] and that Mr. Holt operated the link belt crane on claim date. They are Bridge Inspectors and were sent to inspect the bridges between Grosbeck and Corsicana to make sure they were in good repair and operation for train movement."

The Carrier argues that the claim should be dismissed in its entirety because the Organization failed to carry its burden of proof. The factual dispute over whether Mr. Wheeler and Mr. Holt actually performed the work in question was never resolved on the property. The only eyewitness account included in the record is the written statement by Mr. Wheeler in which he denied that he and Mr. Holt pulled the drift with the crane. He stated that "Mr. Smith's gang pulled the drift."

The record also contains statements by the Claimants denying that Mr. Smith's gang pulled the drift on the date in question, but there is no evidence to show that they actually saw who pulled the drift. The Organization carries the burden of demonstrating a violation of the Agreement, and the resolution of this factual dispute is essential to the Organization's proof. Because there is an irreconcilable dispute in essential facts, the Board has no alternative but to dismiss the claim.

AWARD

Claim dismissed.

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 26th day of December 1996.