

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32153
Docket No. MW-31394
97-3-93-3-388**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Railroad (former St. Louis-
(San Francisco Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Herzog) to unload ties from Mile Posts 366.0 to 390.0 without assigning a special equipment operator thereto, from March 9 through April 3, 1992 (System File B-1902-19/8MWC 92-05-07B SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, Special Equipment Operator D. R. Sconyers shall be allowed forty-nine (49) hours' pay at the applicable special equipment operator's rate for the hours spent by the outside forces in the performance of the work in question.”**

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.

This dispute concerns an aspect of the Carrier's utilization of a contractor to unload concrete cross ties. The aspect at issue is confined to whether or not the Carrier is required to assign a Special Equipment Operator to assist. The Carrier did assign a Foreman and Trackmen.

This identical issue, involving the same parties, was reviewed by the Board in Third Division Award 31615. The Board finds the reasoning therein to be sound and has no basis to reach a different conclusion.

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 13th day of August 1997.