

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32444
Docket No. MW-31319
98-3-93-3-263**

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 Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Supervisors W. Dorbish and A. Keppel to perform Maintenance of Way work (repairing No. 14 Switch) at the north end of the Bridge Yard, Ashtubula Harbor Yards on September 18, 1991 (System Docket MW-2443).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. V. Shumaker and D. A. McCullough shall '... each be paid 2.7 hours overtime at their applicable and respective rates, of foreman and vehicle operator.'"**

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.

As Third Party in Interest, the United Railway Supervisors Association was advised of the pendency of this dispute and chose to file a Submission with the Board.

The dispute concerns the repair to No. 14 switch at Bridge Yard in Ashtabula Harbor Yards. On September 18, 1991 at 4 P.M., a Foreman on duty noticed a gap in the switch. He notified his Supervisor, who came to the scene with another Supervisor, both of whom are not covered by the Organization's Agreement.

According to the Foreman, the two Supervisors proceeded to repair the switch, performing work within the scope of the Maintenance of Way Employees' Agreement. According to the Carrier, one of the Supervisors directed the Foreman to make the repair; the Foreman stated he did not know how to do it; and the Supervisor proceeded to "instruct" the Foreman, apparently taking care of the repair while doing so. The Carrier states that the second Supervisor did not participate in the work or alleged instruction.

The claim is on behalf of two employees who had already completed their day's work and, according to the Organization, were qualified and available to perform the work.

The record provides the Board no means to determine which is the accurate version of what occurred. On this basis, the Board lacks the information to resolve the dispute. In addition, the Foreman asserted that he was qualified to make the repair. The right of a Foreman to perform such incidental duty is well established. Thus, the Board finds no basis under which the Claimants would have been required, regardless of which version is correct.

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 21st day of January 1998.