

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32788
Docket No. MW-30594
98-3-92-3-357**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Supervisor R. Mallet to perform Maintenance of Way work operating the rail lifter on October 31, 1990 and setting and picking plates on November 1, 1990 and continuing, while assigned to the tie gang at E. Conway (System Docket MW-1763).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant W. Devlin shall be allowed ten (10) hours' pay at the applicable rate for each day the supervisor performed Maintenance of Way work beginning October 31, 1990 and continuing."**

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 (URSA) was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

On October 31 and November 1, 1990, Carrier utilized a URSA Track Supervisor to instruct employees in their duties, including use of a rail lifter. By letter of November 4, 1990, the Organization filed a claim alleging that the Carrier had violated the Scope Rule of the Agreement between the Carrier and BMWE. The claim was denied and subsequently appealed, up to and including conference on the property on January 21, 1991, after which it remained unresolved.

The Board carefully reviewed the evidence in this case. There has been no showing on the part of the Organization that either the Supervisor did the work claimed, the work he did was encompassed by the Scope Rule, or that Claimant was, in fact, qualified and available to perform the work claimed.

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 23rd day of September 1998.