

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32913  
Docket No. MW-31851  
98-3-94-3-161**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Elgin, Joliet and Eastern Railway Company)

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier abolished B&B Painter O. Johnson's position and thereafter, beginning December 30, 1992, assigned Painter Foreman T. Woynaroski to perform painter's work instead of recalling and assigning a painter to perform such work (System File BG-684-93/TM-2-93).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant O. Johnson shall be recalled to service and compensated at the applicable B&B painter's rate for all wage loss suffered as a result of the Carrier assigning an employee in a higher classification (foreman) to perform painter's work beginning December 30, 1992 and continuing until the violation ceases."**

**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.

The Board has been presented with Public Law Board No. 5905, Award 3 involving the same parties and Claimant. That Award addressed a claim where the record showed an abolishment of Claimant's job effective January 3, 1992 as a result of a reduction-in-force. That Award found:

"The record makes clear that, on this property, foremen are working foremen and it has been the parties' long-standing practice to retain the working foreman rather than the senior painter in a reduction-in-force. Accordingly, we find that there was no violation of the Agreement, in the instant case."

This appears to be the same dispute. Award 3 has adjudicated this dispute. This claim shall be denied.

**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 November 1998.