

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35528  
Docket No. MW-32562  
01-3-95-3-482**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(St. Louis Southwestern Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it assigned Machine Operators E. L. Hawkins, E. F. Wyrick and T. L. Reed to perform laborer duties at Mile Post 264.2 in the Pine Bluff Yard beginning March 28 through April 26, 1994, instead of calling and assigning furloughed Laborers L. C. Brown, J. Grandy and F. Payne (System File MW-94-61-CB/BMW 94-552).**
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Laborers L. C. Brown, J. Grandy and F. Payne shall each be allowed one hundred eighty (180) hours' pay at their straight time rate and eighteen (18) days' credit for benefits and vacation purposes."**

**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.

At the time this dispute arose, the Claimants were Track Laborers in furloughed status. At that time, E. L. Hawkins, E. F. Wyrick and T. L. Reed were Machine Operators.

According to the statement of Roadmaster R. L. Griffin, Machine Operators Hawkins, Wyrick and Reed were used "... from March 28, 1994 to April 15, 1994 to install rail anchors by hand in the yard." Roadmaster Griffin further states that "... [o]n April 18, 19 they were used to repair defects written up by FRA Inspector [and o]n April 29, 1994, Mr. Trammel & his complete gang reported to me to install cross ties on the engine service tracks with their equipment."

The reason for use of Machine Operators Hawkins, Wyrick and Reed to install rail anchors by hand was further explained by Roadmaster Griffin in his statement:

"To make a long story short I did use these Machine Operators for the most part of three weeks to install rail anchors by hand, with the exception of E. L. Hawkins which I used on a machine called a speed swing to do other work connected with derailments in the yard. I do not have the exact times Hawkins was on a machine here, but it was about 7 days out of the three weeks.

I had no choice in the matter. . . . Some of the time three men could not have operated the machines they was assigned to due to equipment being moved by trucks from one location to another. So should we cut these men off every time we move their equipment or use them doing other work during this time.

Article 17, Section 4 provides:

**SECTION 4.** Employees of roadway machines will be required to work with gangs under the foreman in charge and perform any work they are able to handle under the direction of the foreman when their machine is not actually being used. Machines will not be idled for the sole purpose of supplementing the force in a gang."

The Organization asserts that Machine Operators Hawkins, Wyrick and Reed were improperly assigned to perform the Claimants' work of installing rail anchors by hand and that the Machine Operators' equipment was "... idled for the sole purpose of

supplementing the force in a gang.” In response, the Carrier’s defense focuses on Roadmaster Griffin’s statement that the reason for the assignment of the work to the Machine Operators was because the Machine Operators’ equipment was “. . . being moved by trucks from one location to another.”

Thus, the facts in this case are that for “the most part of three weeks” Machine Operators were used “to install rail anchors by hand” and that the reason for the Carrier’s assignment of that work to the Machine Operators was because the Machine Operators’ equipment was “. . . being moved by trucks from one location to another.”

Installing rail anchors by hand is work accruing to Track Laborers - the Claimants. We find that the Organization’s showing that Machine Operators were used to install rail anchors by hand “for the most part of three weeks” is a prima facie showing that the work was improperly assigned to Machine Operators in that, under Article 17, Section 4, such a duration of time leads to a rebuttable conclusion that the Carrier did not comply with the requirement that “[m]achines will not be idled for the sole purpose of supplementing the force in a gang.” Simply put, three weeks is a long period of time to move equipment which requires some further explanation from the Carrier.

That three week showing shifts the burden to the Carrier to demonstrate why it took three weeks to make that move of the Machine Operators equipment “by trucks from one location to another.” However, aside from the general statement by Roadmaster Griffin that it took three weeks to move the equipment, there is no further explanation in this record for such a long period of time. The Carrier has not met its burden on rebuttal. We, therefore, find that under Article 17, Section 4, use of Machine Operators to perform the disputed work for the “most part of three weeks” violated the requirement in that section that “[m]achines will not be idled for the sole purpose of supplementing the force in a gang.” We find that Machine Operators were improperly used to perform this work.

Third Division Award 32619 between the parties relied upon by the Carrier does not change the result. There, the work in dispute which covered a five day period (and not three weeks, as here) was found to be an integral part of the Machine Operators’ duties. The distinguishing factor between the two cases is the substantial difference in time. Again, here the Carrier made a general statement concerning the asserted reason why the equipment was not being used. However, given the length of time involved, more was needed to avoid the conclusion that, as the Organization argues, the machines were idled for the sole purpose of supplementing the force in a gang in violation of Article 17, Section 4.

With respect to the remedy, the Claimants are entitled to compensation in accord with the number of hours of work performed by the Machine Operators during the claimed period where they installed rail anchors by hand. Given Roadmaster Griffin's statement that the work was performed "for the most part of three weeks" and that one of the Machine Operators was used for "about 7 days out of the three weeks" to perform work with equipment, the record is not sufficiently clear on precisely how many hours were involved. This matter is therefore remanded to the parties to determine the number of hours involved during the claimed period where Machine Operators were used to install rail anchors by hand. The Claimants shall be accordingly made whole based upon those hours.

With respect to the Organization's vacation entitlement arguments, we agree with the Carrier that the issue was not sufficiently explored by the parties on the property. That claimed entitlement shall be part of the remand in this matter.

The Board shall retain jurisdiction to resolve disputes, if any, concerning the remedy.

In light of the result, the Organization's other arguments are moot.

#### **AWARD**

Claim sustained in accordance with the Findings.

#### **ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of July, 2001.