

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35992
Docket No. MW-33268
02-3-96-3-740**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Messrs. B. Walton, R. Dasco, W. Pratt and L. Morlan to perform trackman's work at Mile Post 174.2 near Oak Street Yard, Mansfield, Ohio on the Fort Wayne Line on April 8, 1995 (System Docket MW-3963).
- (2) As a consequence of the aforesaid violation, Claimants G. Slates, H. Bryant, D. Stinchcomb and J. March shall each be allowed fourteen (14) hours' pay at their respective time and one-half rates.”

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 claim alleges a violation of the Agreement when Foremen were called instead of the Claimants to perform Trackman work on the claim date. Careful review of the record shows that elements essential to the merits of the claim have not been established.

The Carrier's assertion that Claimants Slates and Stinchcomb were called and were not available have not been refuted. The statement provided by Slates does not relate to the claim date. The Organization's assertion of typographical error is just that - an assertion - and cannot serve to rehabilitate information contained in a handwritten

statement. The statement provided by Claimant Stinchcomb actually corroborates the fact that he was not at home when called on the claim date.

As for the remaining two Claimants, the record provides only assertion, without any supporting evidence whatsoever, that Foremen W. Pratt and B. Walton performed Trackman work. Such assertion was refuted by the Carrier. Thus the Organization was required to prove its contention. It failed to do so.

In light of the foregoing, the claim must 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 19th day of March, 2002.