

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44093
Docket No. MW-42780
20-3-NRAB-00003-190346**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier Manager S. Lauby performed Maintenance of Way and Structures Department work (assisting Maintenance of Way forces with track repair work) at various locations on the Omaha Subdivision on May 9 and 17, 2013 (System File G-1309-U-03/1587933).**
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Claimant B. Lippert shall now ‘...be compensated for all the hours in which he was denied the opportunity to work, when the Carrier Manager took it upon himself to perform the duties of the Agreement covered employee. ***’ The Carrier has declined this claim. ”**

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.

Claimant B. Lippert established and maintained seniority as a sectionman and a sectionman truck operator within the Track Subdepartment of the Maintenance of Way and Structures Department with this Carrier for over forty (40) years. The Organization alleges that on May 9, 2013 and May 17, 2013 an exempt employee, Carrier Manager of Track Maintenance (MTM) Scott Lauby performed Maintenance of Way and Structures Department work. Specifically, on May 9, 2013, the Carrier assigned MTM Lauby to perform track work in connection with replacement of a switch point and stock rail at CPB 34 7. On May 17, 2013, MTM Lauby performed track work in connection with joining panels on the Home Plate Track and in connection with repairing a sun kink. Such work is specifically reserved to employees assigned within the Track Subdepartment pursuant to the Agreement, but MTM Lauby was not assigned to any position under the Agreement. Instead, he was assigned as a manager.

The Organization filed a timely claim challenging the assignment on behalf the Claimant. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it is the Organization's responsibility to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). A careful review of the record convinces the Board that, under the circumstances of this case, the Organization has met its burden.

In this case, MTM Lauby provided a written statement explaining that he only performed supervisory tasks. The Organization presented sufficient first-hand evidence of what was observed by employees represented by the Organization on May 9 and May 17, 2013. The written statements of three (3) employees who have nothing to gain, provided specific information in connection with the tasks MTM Lauby performed. Our reading of Rule 9 which defines the work of the Track Subdepartment persuades this Board that MTM Lauby performed work that he was not contractually authorized to

perform. Accordingly, the Claimant shall be compensated for all the hours in which he was denied the opportunity to work, compensated for the difference between his actual overtime earnings on May 9 and May 17, 2013 and the overtime earnings he would have received, if any, had MTM Lauby not performed the duties at issue.

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 11th day of August 2020.