

**BEFORE PUBLIC LAW BOARD NO. 1837**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**NORFOLK & WESTERN RAILWAY COMPANY**

**Case No. 123**

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to recall furloughed Section Laborer J. A. Haynes and instead assigned Crane Operator M. Sutton to work as a groundman assisting a burro crane operator on January 12 through 16, 1998. (Carrier File MW-FTW-98-020-LM-134.)
2. The Agreement was further violated when the Carrier failed and refused to recall furloughed Section Laborer J. A. Haynes and instead assigned Crane Operator M. Sutton to assist Campbellstown Section Foreman J. May patrolling track and making various track repairs on January 5, 6, 7, 8, and 9, 1998. (Carrier File MW-FTW-98-021.)
3. As a result of the violation in Part 1 above, Mr. J. A. Haynes shall be compensated at the applicable section laborer's straight time and/or time and one-half rate of pay for all straight time and overtime hours worked by Crane Operator Sutton on January 12 through 16, 1998.
4. As a result of the violation in Part 2 above, Mr. J. A. Haynes shall be compensated at the applicable section laborer's straight time and/or time and one-half rate of pay for all straight time and overtime hours worked by Crane Operator Sutton on January 5, 6, 7, 8, and 9, 1998.

**FINDINGS:**

Claimant J. A. Haynes, a Hamilton District section laborer, was on furlough status at the time of these claims.

On February 27, 1998, the Organization filed two claims on behalf of the Claimant.

These claims sought payment at the section laborer's straight time and overtime rate of pay for

any and all hours worked by one M. Sutton between January 5 through January 9, 1998, and the period January 12 through 16, 1998, when the Carrier used assigned crane operator M. Sutton to perform the work of a Hamilton District section laborer in assisting assigned Campbellstown section foreman Jamie May in patrolling track and making track repairs, as well as working as a ground man in assisting a burro crane operator at various locations on the Hamilton District, and failed to use furloughed Claimant to perform the work in question. The Organization contends that the Carrier violated the provisions of the effective working agreement dated February 1, 1951, specifically Rules 1-(A) and (B), 11, and 14 (a-d), and that the Claimant was qualified, available, and entitled to perform the work by virtue of his established seniority.

The Carrier denied the claims on the grounds that the work in question was consistent with crane operator work, that it was of a short-term temporary nature, and that there was not sufficient time to recall the Claimant to perform the unexpected work. The Carrier argues that it complied with the provisions of Rule 14 and that there is no express agreement language or documented practice of reserving the work in question to section laborers. In addition, the Carrier contends that for the period January 6, 7, and 9, 1998, the Claimant was off due to bereavement leave on account of his brother's death.

The parties being unable to resolve the issues, this matter came before this Board.

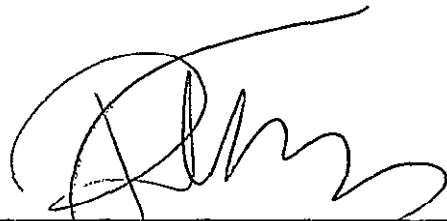
This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the agreement when it did not recall furloughed section laborer J. A. Haynes and, instead, assigned another crane operator to perform the work in question. The scope and classification rules of the agreement are general in nature and do not reserve the specific tasks involved in this case to any particular classification. There

is nothing in the applicable agreement which reserves the work to any classification or to the Claimant. The record is clear that the disputed work has been performed by other than section laborers.

This Board finds that the work of assisting the burro crane was not work which exclusively accrued to the section laborer classification either by the agreement language or system-wide, exclusive past practice. Consequently, the Organization has failed to meet its burden of proof in this case, and the claim must be denied.

**AWARD:**

The claim is denied.



PETER R. MEYERS  
Neutral Member

  
ORGANIZATION MEMBER

DATED: 3-10-00

  
CARRIER MEMBER

DATED: 3-2-00