

PUBLIC LAW BOARD NO. 249

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

NORFOLK AND WESTERN RAILWAY CO.

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the effective Agreement dated February 1, 1951, (Agreement No. 5) when it assigned a Wabash operator to operate a Steam Crane-Pile Driver and a Nickelplate B&B employe to perform work as a Fireman, at Bridge 310-14, on the Peoria Division on September 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; October 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31 and November 1, 1967.

2. The Carrier shall now reimburse Hoisting Engineer G. R. Blackerby 296 hours at straight time rate and 87 hours at time and one-half rate at his respective rate of pay and Steam Shovel Fireman Victor Baird, 296 hours at straight time rate and 87 hours at time and one-half rate at the Steam Shovel Fireman's rate of pay for the above mentioned dates.

OPINION OF BOARD:

It is established that the two employees who performed the work for which claim is made had no seniority entitlement to said work. Carrier nevertheless contends the claimants, whose seniority enabled them to lay claim to this work, were not available because they were working elsewhere on the property on the claim dates. Numerous awards of the National Railroad Adjustment Board nevertheless have held under comparable circumstances that an agreement violation occurred and that compensation is due the claimants.

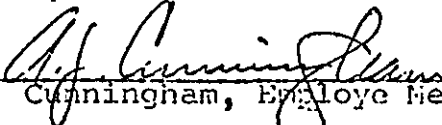
The claim will be sustained, but only at straight-time rates of pay for the hours involved.

AWARD:

Claim sustained to extent indicated in above Opinion of Board.


E. G. Psolla, Carrier Member


Lloyd H. Bailer, Chairman


A. J. Cunningham, Employee Member

Dated: July 13, 1971