

PUBLIC LAW BOARD NO. 2960

AWARD NO. 83  
CASE NO. 124

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned a Scale and Work Equipment Inspector to perform work of a foreman on Saturday, July 30 and Sunday, July 31, 1983.
- (2) Tie Gang Foreman R. Carpintero shall be allowed nineteen (19) hours at his time and one half rate because of the violation referred to in Part (1) hereof. (Organization File 9T-4077; Carrier File 81-83-208).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The basic facts are not in dispute. On July 30 and 31, 1983, the Carrier assigned Machine Operators Barrios, Mahalek and Marquez, who are regularly assigned to the Claimant's tie gang, to perform overtime service in connection with machine maintenance on their respective

machines. Such maintenance is part of the assigned duties of machine operators, and they performed this work with a Scale and Work Equipment Inspector.

The claim basically contends that supervision of the machine operators is reserved to the Claimant pursuant to Rules 1(a), (b) and (c), Rule 3(b), and Rules 4(a), (b) and (c).

A review of the rules relied on by the Organization does not reserve the specific work in question to the Claimant. Nor is there any practice of employees such as the Claimant performing the specific work in question. Thus, the claim cannot be sustained. This decision is consistent with the approach and findings of the Third Division in similar cases. It was stated in Third Division Award 12008:

"There are two Board decisions affecting these parties on the subject of Foremen. In Award 11441, the most recent case, the Board held that:

'We have consistently held that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. Awards 11075 (Dorsey), 7059 (Carter), 6699 (Donaldson), and 6398 (McMahon).

'There is no provision in the Agreement which requires the Carrier to assign a foreman to a labor gang servicing banana cars. The mere fact that a foreman was previously used to call and supervise the labor gang does not establish for all time an obligation that the Carrier continue to use a foreman.'

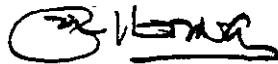
"Award 8849 concerned an Assistant Supervisor who, allegedly, performed the duties of a Section Foreman for three hours in connection with the work of two Section Laborers. Implicit in the Board's sustaining Opinion in that case was the assumption that the supervision exercised by the Assistant Supervisor was identical with that performed regularly by the Foreman. Since no such assumption or finding is warranted in the present case, Award 8849 cannot be deemed controlling."

Similarly in this case, there is no showing that the type of

supervision which appears to be largely technical in nature performed by the Equipment Inspector was the type normally and customarily performed by the Claimant.

AWARD

In view of the foregoing and based solely on the individual facts and circumstances of this case, the claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated:

May 8, 1985