

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 25
Case No. 27

STATEMENT OF CLAIM

The Carrier violated the provisions of the current Agreement, particularly but not restricted to Rules 19 when without agreement with the General Chairman it arbitrarily changed the assigned hours for Mr. C. E. Criddle on May 1, 2, 3, and 5, 1989.

The Carrier will now be required to compensate Claimant at his regular straight time rate of pay in the amount of three (3) hours for each date claimed.

F I N D I N G S

For a brief period commencing May 1, 1989, the Carrier appointed a Laborer to relieve the Track Supervisor, which is an exempt position. In doing so, the hours of work for the employee were changed from a starting time of 7:30 a.m. to 10 a.m. Although not necessarily relevant in the resolution of this matter, the change in hours was with the full

consent of the employee.

The Organization argues that such arrangement was in violation of Rule 19, Starting Time, which requires a starting time for day shift assignment to be between 6 a.m. and 8 a.m., unless the following applies:

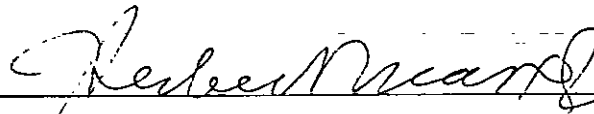
(4) When regular operations require working periods varying from those set forth above, hours of assignment will be designated by agreement between the Company and General Chairman to meet service requirements.

Agreement of the General Chairman was neither sought nor obtained in this instance.

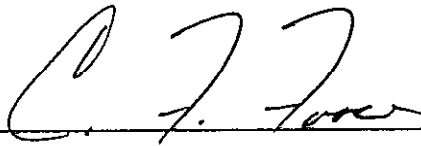
As reviewed in Award Nos. 23 and 24, the position of Track Supervisor is not within the scope of the Organization's Agreement. It is correct that an employee otherwise covered by the Agreement was selected to fill this exempt position on a temporary basis. It does not follow, however, that the conditions applicable to employees under the Agreement necessarily continue where a work assignment is an exempt position.

A W A R D

Claim denied.



HERBERT L. MARX, JR., Chairman and Neutral Member



C. F. FOOSE, Employee Member



R. G. SCHNEIDER, Carrier Member

NEW YORK, NY

DATED: