

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 36

Case No. 36

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement on certain dates between July 16, 1990 and July 26, 1990, when it assigned Group II and III Operators to perform trackman work of pulling spikes, plugging ties and boring anchors. In doing so deprived Trackman B. E. Zorn and G. A. Muniz of work rightfully belonging to them and compensation connected therewith.

2. The Carrier will now be required to compensate Claimants at their respective rate of pay for each date that the Group II and III Operators performed work as outlined in the Organization's initial claim dated March 10, 1990.

F I N D I N G S

The Claimants are Trackmen who, at the time of the incident referred to, were in furlough status subject to recall. There is no dispute that on dates between July 19 and July 26, 1990 Group II and Group III Operators performed duties which might otherwise be assigned to Trackmen.

The Carrier uses as its principal defense Rule 22 - Composite Service, which reads in pertinent part as follows:

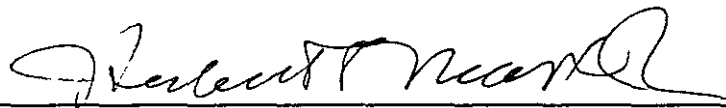
. . . Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position.

Standing by itself, this rule is not sufficient to grant the Carrier's right to make temporary assignments under any circumstances. Obviously, other rules may govern such assignments, and Rule 22 governs pay when such assignments are otherwise proper.

Here, however, the Carrier contends without contradiction that the Operators were employed in related track work "for one or two hours each on the claim dates while waiting for track and time". The Carrier has demonstrated that such brief assignments related to the work at hand is frequently undertaken. Such is not sufficient to require the recall of Trackmen from furlough, although more extensive temporary assignments of the same nature might lead to a different conclusion.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: July 27, 1992