

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 44

Carrier File No. MWA 89-12-13C

Organization File No. C-89-T072-12

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier failed and refused to release Mr. P. T. Fane from a sectionman position on the Mendota Section to assume a Group 5 Machine Operator position on Tie Gang MTG-3 beginning on August 21, 1989.

2. As a consequence of the violation referred to above, Claimant P. T. Fane shall be allowed compensation at the appropriate Group 5 Machine Operator rate for all time he was improperly held on a sectionman position on the Mendota Section from August 21 through September 13, 1989. In addition, he shall be granted the appropriate Rule 38 allowances concomitant to the Group 5 Machine operator position from August 21 through September 13, 1989.

FINDINGS

This dispute is closely similar to that reviewed in Award No. 43. In this instance, the Claimant was not released to his new position for 24 days because, according to the Carrier, the gang to which he was assigned was shorthanded, and it was necessary to hold

him until a replacement was selected. On this basis, the Board reaches the same conclusion as in Award No. 43.

A W A R D

Claim denied.

*Herbert L. Marx, Jr.*

HERBERT L. MARX, Jr, Chairman and Neutral Member

*Mark J. Schappaugh - I dissent - written dissent to follow*

MARK J. SCHAPPAUGH Employee Member

*D.J. Merrell*

D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: 2/24/1994