

**PUBLIC LAW BOARD NO. 6249**

**PARTIES )      BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO )**  
**DISPUTE )      UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN**  
**)      PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))**

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Union Pacific Railroad employees to perform work (mark ties) between Mile Post 132, Luling, Texas and Mile Post 153, Marion, Texas on the San Antonio Division on January 13 through 31, 1997, instead of assigning Messrs. G. B. Dutchover, R. C. Rickets and J. P. Balzen to perform said work (System File MW-97-120/1058534 SPE).

2. As a consequence of the violation referred to in Part (1) above, Messrs. G. B. Dutchover, R. C. Rickets and J. P. Balzen shall each be allowed one hundred twenty (120) hours' pay at their respective straight time rates and an equal proportionate share of all overtime hours worked, during the period in

question, at their respective time and one-half rates.

**OPINION OF BOARD**

Claimants are track foremen holding seniority on the Southern Pacific Eastern Lines, San Antonio Division. The disputed work in this case is the marking of ties that needed to be replaced. On the dates set forth in the claim, UP Agreement employees as opposed to SP employees were assigned to mark ties. This claim followed.

The Carrier asserted in its April 23, 1997 denial that the marking of ties "... is not and has never been exclusive of the track foreman ranks" and "[t]he marking of ties is not work specifically assigned to the track foreman."

In its June 10, 1997 letter the Organization disagreed stating that "[t]he BMW, Eastern Lines employees, have customarily and historically performed the same type of

work on a daily basis ....” However, attached to that letter is the statement of Claimant Balzen who stated that:

\* \* \*

In the past it has always been the practice for the Roadmaster to mark his own ties. He would have a foreman go ahead of him and do a first pass marking the most evident ones and others he would come behind and make a final decision on any questionable ones taking into consideration his allocation of ties, the overall tie condition, and the number of miles the tie gang was going to retie.

\* \* \*

The premise of the Organization’s position (and its required burden in these kinds of cases) is that track foremen such as Claimants “... have customarily and historically performed the same type of work ....” Given the Carrier’s assertion that track foreman have never exclusively performed the work and further given Claimant Balzen’s candid statement that “... it has always been the practice for *the Roadmaster* to mark his own ties ...” [emphasis added], we cannot find that the Organization has supported its premise and made its required showing.

**AWARD**

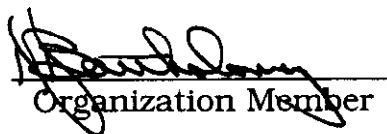
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Organization Member

Dated: 7-15-02