

AWARD NO. 38  
CASE NO. 38

**PUBLIC LAW BOARD NO. 6249**

<b>PARTIES</b>	)	<b>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES</b>
<b>TO</b>	)	
<b>DISPUTE</b>	)	<b>UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))</b>

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned or otherwise allowed Union Pacific employe V. Davis to perform track work (surfacing track) between Mile Post 600.6, Strobel and Mile Post 607.2, Alpine, Texas on Saturday, June 21 and Sunday, June 22, 1997 instead of calling and assigning Machine Operator A. A. Riojas (System File MW-97-245/1094301 SPE).

2. As a consequence of the violation referred to in Part (1) above, Machine Operator A. A. Riojas shall be allowed twenty-three (23) hours' pay at his machine operator's time and one-half rate for the hours expended by the Union Pacific employe in the performance of the work in question.

**OPINION OF BOARD**

Claimant holds seniority on the SP San Antonio Division and was assigned to operate Tamper 9507. The claim asserts that the Carrier failed to offer Claimant weekend track work but instead offered the work to UP employee V. Davis in violation of Claimant's seniority entitlements.

A statement from Claimant asserts that he was available for the work and the work was not offered. A statement from Supervisor M. Svatek states that only regulators were used and that no tampers were working on the relevant dates because all employees were offered the overtime and declined the work.

The record is in irreconcilable dispute on the crucial facts necessary to resolve this matter. From what is before us as developed on the property, we cannot clearly as-

certain what work was actually performed and whether Claimant was offered and declined the overtime opportunity. Claimant states he was not offered the work, while the Carrier states that he was. Claimant contends that his work was performed on the weekend, while the Carrier states that it was not.

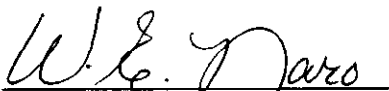
The burden rests with the Organization to demonstrate facts sufficient to support its claim. A record in dispute on the critical facts cannot meet that burden.

**AWARD**

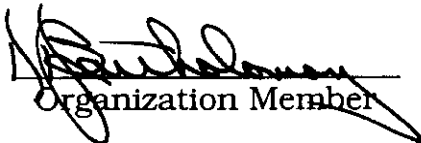
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Dated: 7-24-02