

PUBLIC LAW BOARD NO. 6538

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	
and)	AWARD NO. 9
)	CASE NO. 9
BNSF RAILWAY COMPANY)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to compensate Mr. B. L. Saylor at the section foreman’s rate for all time and services rendered beginning August 18, 1999 and continuing through August 29, 1999 (System File T-D-1861-H/11-99-0520 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Saylor shall now be compensated for the difference in rates of pay between that which he received and that of foreman for all time worked beginning August 18, 1999 and continuing through August 29, 1999.”**

FINDINGS:

Public Law Board No. 6538, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

This claim alleges that, during the period August 18 through August 29, 1999, Claimant, who was assigned as a Sectionman, was directed to perform the duties of the vacationing section Foreman. The claim seeks payment at the Foreman’s rate of pay for all time worked during this period, in accordance with Rule 44, which states:

An employee assigned by proper authority to perform service on a higher rated position for one (1) hour or more shall be paid the higher rate for the time assigned thereto; except that when the time so engaged exceeds four (4) hours in one day will be allowed the higher rate for the entire day. The rate of pay of an employee will not be reduced when temporarily assigned by proper authority to a lower rated position.

During the handling of the claim on the property, the Organization submitted a statement from the Claimant which states that he directed the work of the Redfield section when the Foreman was on vacation but he did not receive the Foreman's rate of pay. The Organization submits that Claimant is entitled to be compensated for performing Foreman duties during the time period in question and therefore the claim must be sustained.

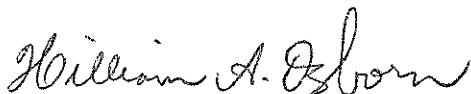
Carrier initially responded to the claim by offering to settle the matter for the difference in pay between the section Foreman and Sectionman. The Organization rejected the offer because the Carrier's offer to settle was made on a nonreferable basis. In subsequent correspondence, the Carrier took the position that the Organization had not met its burden of proof and that no violation of the Agreement took place.

The Board concludes that the Organization has established a violation of the Agreement in the instant case. Carrier contended during claims handling that August 28 and August 29, 1999 were rest days on which Claimant did not perform any service for the Carrier. The Organization did not refute that statement. Accordingly, the claim shall be sustained on that basis. Carrier is directed to compensate the Claimant for the difference in pay between a section Foreman and a Sectionman, including hours worked at both the straight time and overtime rates of pay, during the period August 18 through August 27, 1999.

AWARD

Claim sustained as set forth in the Findings.


ANN S. KENIS, Neutral Member


Carrier Member
William A. Osborn


Organization Member
Roy C. Robinson

Dated this 28th day of June, 2007.