

**BEFORE PUBLIC LAW BOARD NO. 1837**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**NORFOLK & WESTERN RAILWAY COMPANY**

**Case No. 122**

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated on January 6, 7, 8, and 9, 1998, when the Carrier assigned Lima Section truck driver laborer K. A. Graham overtime service to secure track time and assist in work performed by a work train assigned to the Hamilton District (Carrier's File MW-FTW-98-019).
2. As result of the violation, assistant section foreman R. A. Hicks shall be compensated twenty (20) hours at his respective time and one-half rate of pay.

**FINDINGS:**

Claimant R. A. Hicks was employed by the Carrier as an assistant foreman at Campbellstown, Ohio, at the time of this claim.

On February 27, 1998, the Organization filed a claim on behalf of the Claimant for twenty hours overtime work lost at the Claimant's respective time and one-half rate of pay for the period January 6 through 9, 1998. This claim resulted when the Carrier assigned Lima Section truck driver laborer K. A. Graham, who, the Organization contends, held no seniority on the Hamilton District, to perform the overtime duty of obtaining track time and assisting a work train working on the Hamilton District and failed to afford the Claimant the opportunity to do so in violation of the parties' agreement dated February 1, 1951, Rules 1(a), 1(b), and 3, and Section (2) (First) of the Railway Labor Act. The Organization argues that the Claimant should have been assigned the work because he held seniority on the Hamilton District as an assistant section

foreman and was available and qualified to perform the work and that K. A. Graham failed and refused to establish seniority which would make him eligible for consideration to perform the work in question.

The Carrier denied the claim contending that K. A. Graham is a hoisting engineer with division seniority and was not limited to the Lima District and was working as a crane operator during the claim period. Therefore, the Carrier argues that Mr. Graham was rightfully assigned to perform the work in question. The Carrier also argues that the work performed by Mr. Graham on an overtime basis was a continuation of the work performed by him during his regular working hours and the Carrier properly continued him on this assignment, and there was no agreement requirement to call the Claimant to perform the work in place of Mr. Graham. The Carrier also contends that there is no rule or practice under the agreement which exclusively reserves the securing of track time to an assistant foreman or to any member of the Organization's craft. The Carrier further points out that the Organization's claim is excessive in that compensation is being sought for time in which the Claimant performed no service and that, on January 6, the Claimant was paid two hours of overtime for time worked and could not have been available for the overtime claimed.

The parties being unable to resolve the issues, this matter came before this Board.


This Board has reviewed the record in this case, and we find that the work of securing track time that was performed by the crane operator was not work which exclusively accrued to the assistant section foreman classification either by agreement language or system-wide exclusive past practice. Numerous arbitration awards have held that when the scope and classification rules are general in nature, the Organization bears the burden of proof that the

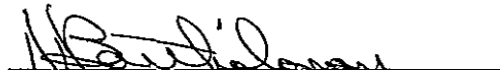
disputed work has, by custom and practice, been performed by one classification to the exclusion of all other employees. The Organization has failed to meet that burden of proof in this case.

This Board finds that the Organization has failed to prove that the work performed by hoisting engineer Graham exclusively accrued to the assistant section foreman classification. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
PETER R. MEYERS  
Neutral Member

  
ORGANIZATION MEMBER

DATED: 3-10-00

  
CARRIER MEMBER

DATED: 3-2-00