

PUBLIC LAW BOARD NO. 4669

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
TO            )  
DISPUTE     ) BOSTON AND MAINE CORPORATION

**STATEMENT OF CLAIM**

1. The Agreement was violated when the Carrier assigned and used supervisors above the rank of foreman to perform track inspection work beginning on July 23, 1986 instead of assigning Track Inspection Foreman M. Mitchell and Trackman L. Welcome to do so.
2. As a consequence of the violations referred to within Part (1) hereof, the Claimant[s] shall be returned their positions and compensated for all wage loss or difference in loss of earnings from July 23, 1986 until restored to their positions.

**OPINION OF BOARD**

The history of this dispute and resolution of general arguments common to the cases before this Board are set forth in Award 1 of this Board and are incorporated herein.

The dispute in this case concerns claims filed by Organization dated August 28, 1986 asserting that subsequent to July 23, 1986 the Carrier assigned certain track inspection functions to non-covered management personnel as opposed to Claimants.

The on-property handling shows that in the claims the Organization alleged that the Carrier violated the relevant provisions of the Agreement "when on July 23, 1986 and there after allowed non-agreement, Management Personnel to perform the work which we feel has historically, traditionally and by agreement been performed by Maintenance of Way Employees."

The Carrier denied the claims by letter of October 24, 1986 factually contesting the Organization's position asserting that "In regards to management personnel patrolling their districts the Carrier has long considered this to be a part of a supervisor's duties and in fact they are and have been required to do so."

The Organization's November 6, 1986 appeal again asserted that "Supervisors [are] doing our work" and further asserted that "Whether Supervisors are instructed to Patrol their territories periodically is of no concern as long as the Maintenance of Way Employees are allowed to continue their prescribed work in the prescribed territory ...."

In the Carrier's December 31, 1986 declination the Carrier asserts that "Management personnel have in the past patrolled track and will continue to do so in the future."

In the Organization's February 18, 1987 further appeal, the Organization asserts that "The Supervisor's responsibility was to patrol to make sure that the I&R Crew was performing their function properly."


The Carrier's next declination is dated April 16, 1987 which states "that Track Supervisors are responsible for making routine patrols over trackage within their respective jurisdiction and have performed such function since time immemorial."

The claims must fail for lack of proof. The burden is upon the Organization to establish all elements supporting the claims. Careful review of the on-property handling fails to disclose precisely what work the Organization asserts management personnel were improperly performing. In any event, the Carrier consistently contested the general assertions made by the Organization. Without more, we cannot say that the Organization's assertions have sufficient factual basis for us to make the appropriate determinations that the work performed by management personnel violated the cited provisions of


the Agreement.

**AWARD**

Claims denied.

  
Edwin H. Benn  
Neutral Member

  
R. E. Dinsmore  
Carrier Member

  
W. E. LaRue  
Organization Member

North Billerica, Massachusetts

Dated: 21 18 1987