

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 6

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to properly compensate Mr. M. Hempen in connection with his Employee-in-charge duties beginning October 31, 2011 and continuing (System File SK-4003-5).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must compensate Claimant Hempen the difference in pay between what he was compensated and what he should have been compensated beginning October 31, 2011, and continuing.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it instructed the Claimant to perform foreman duties, including acting as the Employee-in-Charge (EIC), but compensated the Claimant at the track laborer’s rate of pay for all hours worked during the claim period, beginning on October 31, 2011, and continuing. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the evidence establishes that the Carrier assigned the Claimant to perform foreman duties but refused to compensate him at the higher rate of pay for said foreman duties; because there is no dispute that the Claimant performed foreman duties beginning on September 9, 2011, and continuing; because the Carrier also failed to compensate the Claimant for work performed in excess of forty hours per week throughout the entire

claim period; because there is no merit to the Carrier's defenses; and because the Claimant is entitled to the full remedy requested. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because the Claimant was assigned EIC duties and the Agreement does not require payment at the Foreman rate for the performance of EIC duties, because the Claimant performed EIC duties while working as a track laborer so he properly was paid at the track laborer rate, and because there was no Agreement violation when the Carrier did not pay the Claimant while he did not have to work.

The parties being unable to resolve their dispute, this matter came before this Board.


This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it failed to pay the Claimant at the track foreman rate of pay on the days that he worked as the employee-in-charge. The record reveals that there is no employee-in-charge position in the Agreement and no separate rate of pay for that position. Although the Claimant contends that he worked as a track foreman, the record reveals that the Claimant was not qualified as a track foreman and did not have a commercial driver's license, which is a requirement of being a track foreman. The record reveals that the Claimant only was placed in the employee-in-charge position and was therefore properly paid throughout the entire time that he served in that capacity. The record reveals that any qualified member of the team can be assigned the duties of employee-in-charge in addition to their regular duties and that was the case with the Claimant. There is nothing in the Agreement that

requires that the employee-in-charge be paid at a different rate of pay.

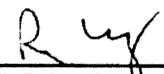

It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization has failed to meet that burden of proof. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER
DATED: 11-4-14
CARRIER MEMBER
DATED: 11-6-14