

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 62
)
) Award No. 48
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 23, 2005

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier assigned Palestine Subdivision Track Foreman/Lubricator R. Roberts to perform track work between Mile Post 102.00, Flatonia Texas and Mile Post 00.00, Victoria, Texas on the Kingsville Subdivision from December 7, 1998 through January 29, 1999 (System File MW-99-118/1178767 MPR).
2. As a consequence of the violations referred to in Part (1) above, Kingsville Subdivision Foreman D. F. Swoboda shall receive two hundred sixty-four (264) hours at his respective straight time rate of pay and sixty-six (66) hours at his respective time and one-half rate of pay for the work performed by the Palestine Subdivision employee from December 7, 1998 through January 29, 1999.

FINDINGS:

Public Law Board No. 6402, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

By letter agreement dated September 30, 1983, Carrier established the position of Track Inspector. The Agreement expressly provided, "[T]hese positions were official positions and would not be subject to the Schedule Agreement between Missouri Pacific Railroad and the Brotherhood of Maintenance of Way Employees effective July 1, 1980." The positions are represented by ARASA, not by BMWE.

On the dates in question the ARASA Supervisor regularly assigned to the Track Inspector

position was relieving other ARASA Supervisors who were on vacation or on bereavement leave. A Track Foreman/Lubricator who held seniority on the Palestine Subdivision was assigned to relieve the ARASA Track Inspector. The Organization maintains that Carrier violated the Agreement by using a Palestine Subdivision employee on the Kingsville Subdivision.

The Scope Rule provides:

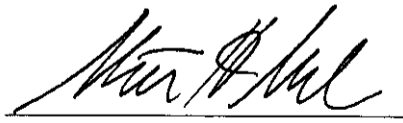
These rules govern the hours of service and working conditions of all employees herein named in the Maintenance of Way Department and subdepartments thereof (not including supervisory forces above the rank of foreman) . . .

The instant dispute concerns the relief of an ARASA Track Inspector, i.e. a supervisory force above the rank of foreman. Under the clear, plain language of the Scope Rule, the assignment of an employee to such a position is not covered by the Agreement.

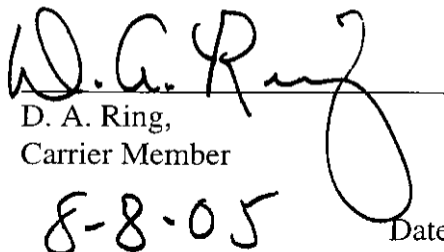
The Organization submitted a statement by Claimant which included a statement signed by four other foremen to the effect that they regularly relieved Track Inspectors when the Track Inspectors were on vacation. The statement, however, does not change the basic fact that the position of Track Inspector is not covered by the Agreement. Therefore, the determination of who will relieve a Track Inspector while the Track Inspector is temporarily unavailable is not governed by the Agreement. Accordingly, the claim must be denied.

AWARD

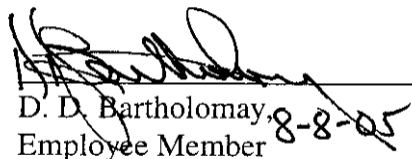
Claim denied.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member
8-8-05



D. D. Bartholomay,
Employee Member 8-8-05

Dated at Chicago, Illinois, July 29, 2005