

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 113

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of B. W. Hager for forty-two (42) hours at the straight time rate account of a trackman being used at an excavation project of September 5, 6 and 7, 2000.

(Carrier File MW-ROAN-00-65-LM-437)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

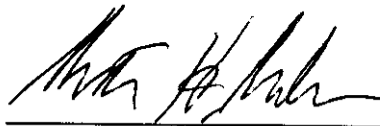
On the dates in question, a contractor was performing excavation work on the Christianburg District within the territory of the section gang headquartered at Oakvale, Virginia. The section foreman was assigned during the day to flag for the contractor, obtain track time for the contractor and insure the integrity of the track against disturbance by the contractor. From 7:00 p.m. until 7:00 a.m., Carrier assigned a trackman to the excavation site. The Organization maintains that Carrier should have assigned Claimant, an assistant foreman, rather than a trackman.

The Organization contends, "Historically, on this property, a contractor performing work along the right-of-way requires an Assistant Foreman or Foreman. If it were not necessary to perform this work in this fashion, why was a Foreman used during the daylight hours."

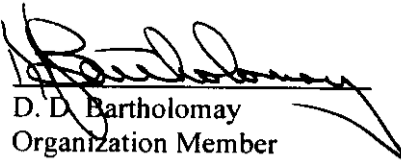
Carrier answered this contention during handling on the property. In declining the claim, the Division Engineer wrote, "Trackman G. W. Thompson, from the Oakvale Section, worked strictly as a Watchman from 7:00 AM (sic) to 7:00 AM in order to monitor the work site and insure the safety of all train movements from falling rock and debris. . . . The watchman job worked by Mr. Thompson did not involve obtaining track time at any time."

The Organization never controverted Carrier's factual representation concerning the duties performed by

the trackman. Therefore, we must find that the Organization failed to carry its burden of proof that assistant foreman duties were performed by a trackman. Accordingly, the claim is denied.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 24, 2002