

Award No. 3  
S.B.A. Case No. 3  
(Third Division Docket No. 9723)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
UNION PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the effective Agreement when it failed to call and use Extra Gang Foreman J. Spillane to supervise and direct the work of members of his gang during the period from 8:30 a.m. to 12:00 Noon on Sunday, February 12, 1956, and assigned the work to Assistant Foreman R. S. Decker."
- "(2) Extra Gang Foreman J. Spillane be allowed three and one-half ( $3\frac{1}{2}$ ) hours' pay at the time and one-half rate because of the violation referred to in Part (1) of this claim."

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

Claimant Spillane in his original claim and statement claims he was available for the overtime in question, was present at the work camp and eating at the very time six men were there being rounded up for the work. The other circumstances which he relates tend to corroborate the fact that he was present and available.

The signed statement of truck driver, J. E. Hickman, lends some further corroboration.

On the other side of the ledger there is not a single signed statement or letter in the file, or direct quote from anyone saying that Spillane was not available and just where he said, and when he said, except by Division Engineer, E. F. Kidder.

Of course the Division Engineer was not present and purportedly relies only upon what Decker is supposed to have said. He doesn't quote Decker specifically, offer any signed statement of Decker's or any testimony of Decker's, but merely his own summary or conclusion of what Decker said or meant. There is nothing in the record to show that he even got his information from Decker.

Under these circumstances we believe the claimant's assertion of his availability for the overtime work is sufficiently established.

AWARD:

The claim is sustained at pro rata rate.

SPECIAL BOARD OF ADJUSTMENT No. 313

(s) Marion Beatty  
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Marion Beatty, Chairman

(s) A. J. Cunningham  
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A. J. Cunningham, Organization Member

(s) A. D. Hanson  
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A. D. Hanson, Carrier Member

Omaha, Nebraska  
June 10, 1960