

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39862
Docket No. MW-38891
09-3-NRAB-00003-050329
(05-3-329)

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Group 2 Machine Operator J. Simanek to perform Track Sub-Department sectionman work (hand spiking, shoveling rock, and unload ballast) at the 38th Street Yard in Denver, Colorado on March 14, 2003 instead of Sectionman R. Savala [System File C-03-J010-39/10-03-0339(MW) BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Savala shall now be compensated for eight (8) hours at his respective straight time rate of pay.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant is a Sectionman assigned to the Track Sub-department. The Organization claims that Rules 2, 5 and 55 clearly reserve the work involved to Track Sub-Department employees. Specifically, Rule 2B provides that seniority is confined to a sub-department. Additionally, Rule 5 specifies separate seniority rosters for Track and Work Equipment Sub-Department employees. Moreover, Rule 55 is a reservation of work Rule. Rules 55N and 55Q show the clear differences between work performed by Sectionmen and Machine Operators. The work is assigned to employees who customarily perform such work in accordance with the Agreement. The Work Equipment Machine Operator's assignment to perform Track Sub-Department Sectionman work was in violation of the Agreement.

The Carrier counters that the Agreement does not reserve this work to the Claimant - there is no Rule that states that Roadway Equipment Sub-Department employees cannot repair track. Further, track repair is not reserved to Track Sub-Department employees. Shoveling ballast, driving spikes and unloading ballast is all incidental to repairing track and all Maintenance of Way employees repair track. Incidental work is not reserved to any sub-department. According to the Carrier, the Organization is unable to establish exclusivity. Moreover, under Rule 19, the Carrier was not required to recall the Claimant for a 1-day vacancy. Rule 19 requires that a senior qualified employee with a written request on file will be considered to fill vacancies of less than 30 days.

The Board carefully reviewed the evidence. The claim made by the Organization is an intra-craft dispute between Roadway Equipment Department employees and Track Department employees. The Organization must meet a high standard - the Organization must show that the Track Sub Department employees have performed the work of hand spiking, shoveling rock, and unloading ballast on an exclusive basis. See, Third Division Award 37280 and the Awards cited therein.

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The evidence does not establish that the work at issue (hand spiking, shoveling rock, and unloading ballast) was exclusive to the Track Sub-Department. The Organization has not met its burden. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of July 2009.