



Award Number 17962

Docket Number MW-18332

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**SOUTHERN PACIFIC COMPANY  
(Pacific Lines)**

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

- (1) The Carrier violated the Agreement when it assigned track sub-department employees (Extra Gang 152) to perform the work on installing storm drain culverts under the yard tracks at Tucumcari, New Mexico and failed and refused to allow compensation therefor at applicable B&B rates of pay. (System File MofW 52-15)
- (2) Track Foreman W. G. Morris be allowed the difference between what he should have been paid at the B&B foreman's rate of pay and what he received at the track foreman's rate for the time expended in performing B&B foreman's work on the project referred to in Part (1) of this claim.
- (3) Track Laborers C. L. Calderon, R. Cardenas, P. Medina, B. Mirabal, E. Sanchez and C. Martinez be allowed the difference between what they should have been paid at the B&B carpenter's rate of pay and what they were paid at track laborer's rate for the time each expended in performing the work referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On and subsequent to September 20, 1967, the Carrier assigned and used track sub-department employees to perform bridge and building sub-department work at Tucumcari, New Mexico. This work was performed under instructions of the B&B supervisor and was performed under the immediate supervision of B&B Carpenter R. C. Bogart, Jr.

The work consisted of installing eighteen (18) storm drain culverts at various locations underneath yard tracks at Tucumcari, New Mexico. Thirteen of these culverts were of steel composition and were 12" x 13' in dimension. The others were of corrugated galvanized metal composition; one of which had dimensions of 36" x 40' and the remaining four had dimensions of 24" x 20'. The work required tunneling under various yard tracks, installing the various culverts and then to backfill the excavated area.

Work of this character has traditionally been recognized as belonging to the B&B sub-department. Superintendent Coltrin acknowledged that culvert installation work belongs to employees of the B&B sub-department

By letter dated January 25, 1968 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated June 25, 1968 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** This claim is directly related to that submitted in Award No. 17961, which alleged a violation of the Scope Rule, among other rules in that Carrier assigned certain work to track Subdepartment employes rather than to B&B Department employes.

In that latter case, we denied the claim on the grounds that the claimants were confronted with a general Scope Rule, and hence had the burden of showing that the work in dispute belonged to them exclusively. We found that the record did not support the allegations advanced by the Organization.

The instant claim has been submitted on behalf of the track men for the difference in pay between a trackman and a B&B department employe. Since we decided in the aforementioned docket that the evidence did not warrant us finding that the work was reserved to the employes of the B&B department, we must of necessity find no merit in this claim. We will deny the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1970.