

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22729  
Docket Number MW-22627

Joseph A. Sickles, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(Norfolk and Western Railway **Company** (Lake Region)

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

(1) The Agreement was violated when, on October 19, 20, 21, November 12, 30 and December 1, 2, 3 and 6, 1976, the Carrier used Bridge and Building **Department** forces to perform track **work** at Toledo, Ohio (Section #1) and at **Oak Harbor**, Ohio (Section #2) [**System** Files **MW-NWK-76-4** and **MW-NWK-76-5**].

(2) As a consequence of the aforesaid violation, B. A. **Pena**, K. A. **Sarka**, R. **Ramirez**, V. **Ramirez** and L. D'Emilio each be **allowed** an equal proportionate share of one hundred thirty-six (136) hours at their respective straight-time rates and E. **Rodriquez**, C. R. **Clere**, N. L. **Pullen** and D. Bunker each be allowed forty (40) hours of pay at their respective straight-time rates."

**OPINION OF BOARD:** On claim dates, the Carrier utilized the service of Bridge and Building **Employees** to perform certain work of shortening switch ties. The Claimants, who **are** in the Track Department, **assert** that they should have been assigned to perform the work. They cite the Scope Rule as authority for their position, and assert **that the work** of a **Sub-Department** is confined to the **employees** holding seniority therein.

The Carrier has defended its actions by asserting that the work of cutting off the ends of switch timbers has routinely been performed in the past by **employees** of the Bridge and Building **Department**, and it refers to access to necessary tools and skills.

We have reviewed the **record** at length, and note that although **the Company** asserts a past practice, they have not presented factual evidence to us to support that allegation. Accordingly, we have no alternative but to sustain the claim, as submitted.

**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 violated.

A W A R D

Claim sustained.

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

ATTEST: \_\_\_\_\_

*A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of *January* 1980.