

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31226  
Docket No. MW-30872  
95-3-92-3-702

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Southern Pacific Transportation Company  
( (Eastern Lines))

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

- (1) The Agreement was violated when the Carrier assigned B&B Foreman A. Diaz and B&B employes M. W. Woytasczyk and J. D. Ebner to perform track maintenance work [built four (4) thirty-nine (39) foot track panels] at the panel yard in San Antonio, Texas on June 11 through 19, 1991 (System File MW-91-114/503-19-A SPE).
- (2) As a consequence of the violation referred to in Part (1) above, Track Foreman J. Galvin and Track Laborers H. R. Robertson and A. Q. Giner shall each be allowed fifty-six (56) hours' pay at their straight time rate of pay and they shall each be credited with seven (7) days for vacation qualifying purposes."

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 waived right of appearance at hearing thereon.

The Organization filed the instant claim when on June 11, 1991, the Carrier assigned employees from the B&B Department to build track panels at the San Antonio, Texas track panel yard. The Organization alleged that "the Carrier had always assigned track panel construction work to its Roadway Track Department Forces." By assigning B&B forces to perform the work, the Carrier violated Articles 1, 2, 3, 6, and 8 of the Agreement. Furthermore, the Organization argues that the Claimants were fully qualified and readily available to perform the work in question.

The Carrier denied the claim arguing that the work of building panels to be used on bridges is not work exclusive to track employees and that B&B employees could be assigned that type of work.

This Board has thoroughly reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it assigned B&B foremen and employees to perform the subject work. A review of the record reveals that the Organization has not pointed to any classification of work rule that reserves the construction of track panels for bridges to Track Department employees. None of the statements of Track Department employees mentions that the work has been performed exclusively by the Track Department. The Carrier provided a statement from a B&B supervisor which states that during his 38 years with the Carrier, the B&B Department built track panels for bridges on numerous occasions.

It is fundamental that in cases of this kind the Organization bears the burden of proof. In this case, the Organization has not met that burden. Therefore, the claim must be 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 1st day of November 1995.