

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 32647  
Docket No. MW-32372  
98-3-95-3-219

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (former Missouri  
( Pacific Railroad)

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned Division B&B forces to perform the duties of System B&B forces (built a steel bridge at Mile Post 258.3 on the Brownsville Subdivision) beginning November 30, 1993 and continuing and failed to pay them at the proper rate for such work (Carrier's File 940231 MPR).**
- (2) As a consequence of the above-stated violation, the members of B&B Gangs 3002 and 3005 and Messrs. B. Trevino, III, H. S. Wicke, J. E. Ayala and A. V. Lira shall each be compensated '... for the difference in rate of pay between Division and System B&B employes plus System seniority in the classification that each man performed System work. Claim to begin November 30, 1993, and continue for as long as they perform this work.'"**

**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.

Although the parties' Submissions deal extensively with procedural matters, we do not find that the claim can be properly decided on such grounds. While there is a vigorous dispute over whether the claim properly alleges a continuing violation, the Carrier did not raise any procedural objections in its initial denial on the property.

On the merits, the Carrier repeatedly denied any Agreement violation in assigning the work as it did. Given this position, it was incumbent upon the Organization to satisfy its burden of proof to show that the disputed work was exclusively reserved to System B&B forces. None of the Agreement Rules cited as having been violated contains any language explicitly reserving the work. Moreover, the Organization provided no probative evidence to show historical, traditional or customary performance of the work by System B&B forces to the exclusion of all others. On the record before us, we must find that the Organization has not met its burden of proof.

### **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 20th day of July 1998.