

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35003
Docket No. MW-31387
00-3-93-3-384

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned three (3) shop craft employes to perform Track Subdepartment work at the Rail Complex at Springfield, Missouri comprising of unloading ribbon rail from a train, removing the angle bars and other track materials, separating them and reloading them onto another train on September 13 and 14, 1990 (System File B-1322/MWC 90-12-14 SLF).
- (2) As a consequence of the violation referred to in Part (1) above, Assistant Foreman R. Hires shall be allowed pay for twelve (12) man-hours at his respective pro rata 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.

As Third Party in Interest, the National Conference of Firemen & Oilers (Service Employees International Union) was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

This case involves a claim by the Organization that the Carrier violated the Agreement by using Shop Craft employees to perform the work of loading and unloading rails at the Springfield, Missouri, welding plant. According to the Organization, the Carrier has long recognized the proper assignment of Maintenance of Way employees to perform the precise work identified in the claim. It argues that the delegation of such work to another class of employees violated the Agreement.

The Organization disputes the Carrier's claim that the disputed assignment was consistent with a long-standing past practice. It maintains that the Carrier has not presented evidence to support the existence of such a practice. Moreover, according to the Organization, its past acquiescence to de minimus crossings of craft lines did not establish a practice of assigning of Shop Craft employees to perform work contractually reserved to Maintenance of Way employees.

The Organization asserts that the Claimant lost work opportunities, and therefore is entitled to the monetary benefits accruing thereto. It disputes the Carrier's allegation that the Claimant was fully employed, but argues in any case that a remedy is required to protect the integrity of the Agreement.

The Carrier, on the other hand, argues that there has been no violation of the Agreement. According to the Carrier, the claim merely describes the common practice of using the crane operated by Shop Craft employees when the crane operated by Maintenance of Way employees breaks down. According to the Carrier, in such instances, the Shop Craft crew remains with its crane for safety purposes, while the Maintenance of Way Crane Operator and Helpers remain under pay. Thus, the Carrier asserts, no employee suffered any loss.

According to the Carrier, the practice has been in effect for many years and the Organization's claim therefore is barred by the doctrine of laches. As to the merits of the claim, the Carrier maintains that the Organization failed to shoulder its burden of

showing that the disputed work, by custom, practice and tradition, is reserved exclusively on a system-wide basis to Maintenance of Way employees.

The Carrier does not contest the fact that the disputed work ordinarily belongs to Maintenance of Way employees. Rather, it merely asserts that under extraordinary conditions where the BMW-Operated crane breaks down, it should be free to utilize a crane operated by Shop Craft employees on a temporary basis, in order to ensure continued operations, and as long as Maintenance of Way employees suffer no loss of pay as a result of the breakdown.

After carefully reviewing the record evidence, we have determined that the claim must be denied. This dispute is identical to one of the claims reviewed and decided in Third Division Award 34995. The facts being the same in all respects, the Board obviously reaches the same conclusion as in that Award.

As we held in Award 34995, because the utilization of the crane operated by Shop Craft employees was temporary and occurred only during a breakdown of the crane operated by Maintenance of Way employees, and because no BMW-represented employee, including the Claimant, suffered any loss of pay, we deny the claim.

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 September, 2000.