

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35170
Docket No. MW-33716
00-3-97-3-176**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway 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 Track Subdepartment forces to perform Bridge and Building Subdepartment work (build loading and unloading docks) at Mountain Grove, Missouri on May 10, and 11, 1995 and at Seymour, Missouri on May 15, 16 and 18, 1995 (System File B-888-1/MCW 95-07-11AA SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. J. H. Moore, R.E. Owens and M. E. Henderson shall each be allowed pay at their respective straight time rates for an equal proportionate share of the one hundred twenty-four (124) hours expended in the performance of the work involved here”**

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.

At issue in this case is the application of Scope Rule 1 as it applies to Rules 2, 4 and 5. The Organization contends that the work in question (the building of loading and unloading docks) falls within the exclusive jurisdiction of the Bridge and Building Subdepartment. The Carrier claims that the work is general in nature and is not reserved to any particular department. Each cites a statement from a single person alleging that the work either is or is not exclusive in nature. The Organization furnished a letter from an employee in the Bridge and Building Subdepartment which sets forth that for 28 years the department has built many docks and he has not heard of anyone else doing this work. The Carrier responded with a letter from a Supervisor indicating three locations and years in which Track forces had built docks.

Scope Rule 1 is general and does not set forth specific work reservation for any classification of employees. Rule 2 discusses the establishment of seniority and Rules 4 and 5 deal with the establishment of seniority in subdepartments and the definition of what constitutes the various subdepartments.

The burden of proof in this case rests with the Organization. The record reflects that the work in question was for the benefit of the Track Subdepartment. The docks in question were necessary for the storage of Track material. The sole evidence produced by the Organization in support of its claim for exclusivity is the employee letter. The Carrier response alleges three locations where similar work was performed by Track employees. There is a clear conflict between the positions of the parties.

Most persuasive is the Award cited by the Carrier, Third Division Award 24739, in which it is stated in part:

“Here the Organization has failed to prove that the work in question was traditionally and customarily performed by B & B forces. Instead, Carrier and the Organization have raised competing arguments as to who has traditionally removed drift and debris from under bridges on its territory. The Organization’s evidence is insufficient to meet its burden.”

This decision squarely deals with the situation confronted in the instant case. The Scope Rule is general and in the absence of evidence clearly establishing that the work in question was reserved exclusively to the Bridge and Building Subdepartment, the Organization's claim must fail.

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 December, 2000.