

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36217
Docket No. MW-35684
02-3-99-3-622**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned District 11 B&B Crew to perform steel erection crew work (steel bridge repair) on Bridge 127.0 on June 16, 17, 18, 18, 23, 24, and 25, 1997 to the exclusion of Twin Cities Region Steel Erection Crew employes J. C. Lecy, G. L. Mohn, S. G. Stariha, J F. Bartczak, W. C. Thompson, L. E. Nelson and G. C. Schulties (System File T-D-1398-B/MWB 97-11-19AG BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Steel Erection Crew Foreman J. C. Lecy, Assistant Foreman G. L. Mohn, Rank C Mechanics S. G. Stariha, J F. Bartczak, Welders W. C. Thompson, L. E. Nelson and Truck Driver G. C. Schulties shall now each be compensated for ‘. . . an equal and proportionate share of two hundred (200) hours straight time and 1.5 hours time and one half at their respective rates 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.

The Claimants hold seniority on the Twin Cities Region Steel Erection Crew seniority roster. Beginning June 16, 1997, the Carrier assigned a District B&B Crew to repair steel bridge 127.0. The claim argues that this work should have been assigned to the Claimants as members of the Steel Erection Crew, making this an intra-craft dispute.

While the task involved is within the classification of work which may be assigned to a Steel Erection Crew, the issue here is whether such work may also be properly assigned to a District B&B Crew. The Organization relies on Appendix V, which concerned 1973 arrangements for the continuation of former Great Northern district steel bridge gangs. As has been determined in previous Awards, there is in Appendix V no provision for exclusive reservation of work to such gangs.

The Carrier refers to the "common practice on the Carrier's property" of having the repair work here under review performed by District B&B crews. The Organization argues that the Carrier failed to demonstrate such "common practice" through the citation of specific examples. The Board finds, however, that such practice may be readily inferred from the fact that the identical situation has been reviewed and settled in previous Awards, most notably Public Law Board No. 3460, Award 17 involving the same parties. In that Award the Board:

"... concluded that the Organization has not met its burden of proof to establish that the claimants had the exclusive right to make the repairs on Bridge 1402.6. . . . There is nothing in the schedule agreement nor in the past practice which the parties can point to which permits exclusive right of bridge repair work to be vested in the steel erection gangs. Such work, by virtue of the language of the agreement, in this particular case can, indeed, be performed by B & B employees (carpenters) as well as steel

erection crew members. Thus, there was no violation of the agreement by Carrier's assignment of the particular repair work to the B & B gang. . . ."

The Board concurs with the reasoning in Public Law Board No. 3460, Award 17. The Organization's position has been found without merit previously, and nothing further is required here.

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 24th day of September 2002.