

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 38139  
Docket No. MW-36832  
07-3-01-3-388

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employes**  
( **Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned Bridge and Building (B&B) Subdepartment employees assigned to Gang 4932 to perform Track Subdepartment work (removal of bull rails) on Bridges 20.18, 41.60 and 3.43 on the Beatrice Branch on March 27, 28, 29, 31, April 6 and 7, 2000 instead of Nebraska Track Subdepartment Foreman R. J. Blazek, Truck Operator C. W. Poteet and Sectionmen C. D. Meints and B. Durst (System File R-0009-101/1237139).**
- (2) As a consequence of the violation referred to in part (1) above, Claimants Foreman R. J. Blazek, C. W. Poteet, C. D. Meints and B. Durst shall now ' . . . be allowed at their respective straight time rate, an equal proportionate share of the total one hundred forty-four (144) man-hours consumed, i.e. thirty-six (36) hours' pay each, as compensation for the loss of work opportunities suffered.'"**

**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.

On March 27, 28, 29, 31 and April 6 and 7, 2000, Bridge and Building Gang 4932 was assigned to replace the bridge deck ties on three bridges on the Beatrice Branch. In order to replace the bridge deck ties, the Bridge and Building forces had to remove the inside guard rails (bull rails) that were fastened to the bridge ties. The guard rails run adjacent to tracks to keep derailed wheels adjacent to running rails.

On May 26, 2000, the Organization submitted a claim on behalf of four Track Subdepartment employees assigned to Gang 4862. It is the Organization's contention that Track Subdepartment forces have customarily removed bull rails. Therefore, the Claimants should have been assigned to remove the bull rails rather than Bridge and Building employees, according to the Organization.

The Carrier denied the claim contending that the bull rail is part of the bridge and that Bridge and Building Department employees routinely remove bull rails. And in any event, the Carrier contends that when Bridge and Building Gang 4932 removed the bull rails on three bridges on the Beatrice Branch, this was incidental to the primary work of the project, which was removing and inserting bridge deck ties.

It is undisputed that pursuant to Rule 3 the Bridge and Building Subdepartment and Track Subdepartment are separate. Rule 9 states that the construction and maintenance of roadway and track, such as rail laying, tie renewals, ballasting, surfacing and lining track, fabrication of track panels, maintaining and renewing frogs and so forth shall be performed by forces in the Track Subdepartment.

Rule 9 does not specifically reference the work of removing bull rails. Therefore, to prevail in this case, the Organization must demonstrate that removal of bridge bull rails has customarily been performed by Track Subdepartment employees. It failed to sustain that burden of proof, in the Board's opinion.

The Organization submitted a statement from one Bridge and Building employee to support its contention that Track Sub-department employees have customarily removed bull rails. The Carrier countered with a statement from a Manager Bridge Maintenance who stated that bull rails are part of the bridge and are normally removed by Bridge and Building Sub-department personnel.

Based on the record before us, the Board is unable to determine whether Track Subdepartment forces or Bridge and Building Subdepartment forces have customarily removed bull rails on bridges. And in any case, it appears that when Bridge and Building Gang 4932 removed bull rails on three bridges on the Beatrice Branch, this was directly related to replacing bridge deck ties, which was the primary purpose of the project. As such, this incidental work was permissible under Article XI – Intra-Craft Work Jurisdiction of the Agreement. The claim must be denied as a result.

**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 23rd day of April 2007.