

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41101
Docket No. MW-40910
11-3-NRAB-00003-090101**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Flagging Gang 8883 Foreman A. Castillo to perform flagging for the protection of contractors performing weed spraying on the Coast and Niles Subdivision of the Western Division and instead assigned backhoe operator and junior employe S. Singh (Carrier's File 1486071 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Castillo shall now ‘. . . be compensated for all hours worked by Mr. Singh, Straight Time and Overtime, retroactive sixty (60) days from the filing of this claim and continuing until the violation ceases to exist.’”

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 Organization claims that the Carrier violated the Claimant's seniority rights by assigning flagging work on the Niles and Coast Subdivision of the Western Division to S. Singh, a Backhoe Operator on Gang 8885. The Claimant holds seniority as a Foreman assigned to Gang 8883 and, as such, routinely performs flagging work.

Following a careful review of the case record, the Board notes at the outset that the claim fails to specify the dates when the purported violation occurred. Moreover, the Board has previously found that flagging work has been performed by various work classifications on this property (Third Division Award 29052). There is no evidence in the record to indicate that the practice with regard to the performance of flagging work in place on this property has changed since the issuance of Award 29052. Consequently, the Board is compelled to conclude that the Organization failed to meet its burden to prove that the Claimant's seniority rights were violated and/or that the Claimant was deprived of any work opportunity. For all these reasons, the Organization failed to meet its burden to prove a contractual basis for 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 18th day of October 2011.