

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41170
Docket No. MW-40981
11-3-NRAB-00003-090274**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement it assigned outside forces, instead of Claimant R. Morrison, to provide flag protection in connection with the installation of a culvert in the vicinity of Mile Post 66 on the Spokane Subdivision on November 26, 27, 28, 29, 30, December 3, 4, 5, 6 and 7, 2007 (System File D-0752U-228/1495225).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Morrison shall now be compensated for eighty (80) hours at his respective 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.

After review of the record, the Board makes the following findings of fact. By Service Order No. 37701 dated July 11, 2007, the Carrier provided the Organization with an advance written notice of its intent to have a contractor bore and jack a new 120 foot by 32 inch culvert under mainline track located at Mile Post 66.11 on the Spokane Sub-Division in Sagel, Idaho. The Carrier included the following statement in the notice, "Railroad will provide flagman."

The contractor selected under the bid described in the above notice, began its work on November 26 and continued on November 27, 28, 29, 30, December 3, 4, 5, 6 and 7, 2007. The Carrier did not provide flag protection for the contractor or assign any of its employees to serve as the Employee In Charge to protect its interests, because the contractor worked at a distance from the track greater than that which would require a Carrier supplied flagman. In the course of the contractor's performance of the involved work, the track substructure collapsed. The Carrier took one-half mile of mainline track out of service. The Carrier assigned its forces to place ballast to reinforce the substructure of the track at the area where the contractor bored and jacked the new culvert.

This is not a case in which the Carrier elects to assign a flagman and the dispute centers on whether the selection comports with all provisions of the Agreement. Although the Carrier initially anticipated using a flagman to provide protection for the contractor and the Carrier's interests when it provided the July 11 notice to the Organization, by all accounts the Carrier did not assign a flagman. The statement placed in the record during the on-property handling describes the discovery of contractor employees on the track without protective equipment on December 6. Nonetheless, the statement does not indicate that the contractor's employees were observed performing flagman work. There is no suggestion that the Carrier assigned any of its employees to provide flag protection.

The Board's jurisdiction extends to the enforcement of the Rules of the Agreement and practices in effect under the framework of the Agreement. The

Board has no authority to comment on or determine what may appear to be violations of General Codes of Operating Rules, Safety Rules or Roadway Protection regulations, unless those directives are incorporated within the framework of the parties' collective bargaining agreement. (See Third Division Award 20383.) The Board has no authority to direct the methods of operation of the Carrier. (See Third Division Award 15615.) The Board's authority is limited to determining whether the parties' Agreement has been violated. If it has, the Board finds and fashions a remedy that addresses the violation.

The Board lacks authority to direct the Carrier to assign a flagman. The Carrier acted within its managerial discretion when it elected to refrain from assigning a flagman. The Organization failed to identify any Rule that required the Carrier to assign a flagman under the circumstances of this case. The Board, therefore, finds that the Carrier did not violate the Agreement.

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 21st day of November 2011.