

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41424
Docket No. MW-40288
12-3-NRAB-00003-080095**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(BNSF Railway Company (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 failed and refused to compensate Messrs. S. Riehl, H. Doll, J. Beehler and T. Jochim at the appropriate Bridge and Building Steel Erection rates of pay for their work (remove/replace bolts, angle iron, iron brackets and related work) on Bridge 196, a steel span bridge crossing the Missouri River between Mandan and Bismarck, North Dakota, on July 16, 2003 [System File B-M-1138-H/11-03-0243(MW) BNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Riehl, H. Doll, J. Beehler and T. Jochim shall now each be compensated as follows: ‘. . . Claimant Riehl, receive the difference in the rates of pay between that of B&B foreman, \$20.65, and that of B&B Steel Erection Foreman, \$21.49 for eight (8) hours on July 16, 2003. We further request that Claimants Doll, Beehler and Jochim, each receive the difference in rates of pay, between that of their regular assignments and that of Steel Erection Mechanic, \$19.23, for eight (8) hours on July 16, 2003.’”**

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 facts of this claim about pay rates are not in dispute. The Claimants are members of a district B&B crew headquartered at Mandan, North Dakota. On July 16, 2003, they were assigned to perform bridge repair work at Bridge 196, which included four and one-half hours of structural work on the steel: removing steel rivets, angle irons and brackets, enlarging the holes and replacing the rivets with LeJeune bolts. According to the Organization, the work performed constituted steel erection work and should have been paid as such. Instead, the Claimants were paid their normal rates of pay. This claim was filed in protest.

In Third Division Award 40504 involving the parties to this dispute, the Board held:

“Rule 55I describes the work of Steel Bridge and Building Mechanic[s] to include ‘general structural erection, replacement, maintaining, or dismantling of steel in bridges . . . [and] performance of related bridge . . . work . . .’ A specific pay rate is provided. Rule 44 – Composite Service states:

‘An employee assigned by proper authority to perform service on a higher rated position for one (1) hour or more shall be paid the higher rate for the time assigned thereto; except that when the time so engaged exceeds four (4) hours on one day will be allowed the higher rate for the entire day. . . .’

Consequently, the written Rules strongly support these particular claims. The language seems to express a clear intent. The key is not the crew name, but the duties assigned and performed. If higher rated work that is designated Steel and Bridge Mechanic work lasts more than one hour, it is to be paid for at the Steel and Bridge Mechanic pay rate.”

The Board’s reasoning in Award 40504 is not palpably wrong; accordingly, the Board is constrained to follow it. The Claimants worked more than four hours performing higher rated work. Under Rule 44, they are entitled to be paid at their respective higher rates of pay for the entire day.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 5th day of September 2012.