

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41670
Docket No. MW-42061
13-3-NRAB-00003-120428**

The Third Division consisted of the regular members and in addition Referee Michele M. Hoyman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned five (5) Bridge and Building Department employees to perform Track Department work of gauging track and installing ties on the West Belt Main Line on February 24, 2011 instead of Track Department employees R. Gartner, R. Gray, T. Knopf, R. Pruitt and T. Davis (Carrier’s File T040511-01).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Gartner, R. Gray, T. Knopf, R. Pruitt and T. Davis shall now each be compensated for eight (8) hours at their respective straight time rates of pay and for three (3) hours and fifteen (15) minutes at their respective overtime 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 established and hold seniority in various capacities within the Track Department. On February 24, 2011, the Carrier assigned five employees from the Bridge and Building (B&B) Department to repair track on the West Belt Main Line in St. Louis, Missouri. The work involved track gauging and installing ties. The parties dispute whether Track or B&B Department employees should have been assigned to perform this work.

The Organization's position is that the type of work performed in this case has customarily been assigned to Track Department employees. The Organization notes that the Carrier did not dispute this, but instead argued that the assignment of B&B employees was appropriate because (1) the work was performed during an emergency situation and (2) was part of a major maintenance project. The January 3, 2008 Memorandum of Agreement allows the Carrier to assign Track and B&B Department employees in areas outside of their customary scope of work in the event of (1) and/or (2) as noted above. The Organization argues that the Carrier failed to prove that the work in question was performed during an "emergency" event. It argues that the precipitating event in this case – a track being taken out of service for repair – "is not uncommon." It also refutes the Carrier's contention that the work was part of a major maintenance project, because it provided no supporting evidence for such contention.

The Carrier's position is that the work performed was one of its major maintenance projects for 2011. It contends that ties on this particular line needed to be replaced to accommodate increased train traffic. While it acknowledges that it had originally scheduled this task to be completed later in the year, the work became urgent when it became apparent that the ties had deteriorated to such an extent that the West Belt Main Line had to be removed from service by a Track Inspector. The Carrier alleges this created an emergency situation that required the immediate assignment of five B&B employees to quickly restore service. The Carrier notes that all of the Claimants were employed performing other tasks when the events occurred. As a matter of fact the Carrier argued that Claimant Gray was working on this very project. The Carrier relied on a series of Third Division Awards (18305, 18716, 19056,

19254, and others) to argue that, inasmuch as they were gainfully working at the time, the Claimants sustained no loss of work opportunity.

After carefully reviewing the on-property case record, the Board finds that the Carrier did not present sufficient evidence to establish that the work in this case constituted an “emergency” situation, or that it was part of a current major maintenance project. The Board certainly agrees that the work in question was of an urgent nature, but it does not appear to rise to a level that would constitute an “emergency.” Concerning the status of the work as a major maintenance project, the Carrier itself acknowledged that the work was performed before the major maintenance project involving this line was scheduled to begin in 2011. Concurrently, the Carrier failed to refute the Organization’s assertion that the type of work performed here is customarily assigned to Track Department employees. We find that while the Claimants may have been working that day performing other tasks, the nature of the work that needed to be done in this case was such that it could have been structured differently and thus assigned to them. For all these reasons, the Board finds that the claim must be partially sustained. Accordingly, the Claimants, with the exception of Claimant Gray, shall be compensated for the time they would have spent on the work had they been assigned to perform it. We find that Claimant Gray is not entitled to compensation because he worked on this very project.

AWARD

Claim sustained in accordance with the Findings.

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 18th day of June 2013.