

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41672
Docket No. MW-42063
13-3-NRAB-00003-120431**

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 two (2) Bridge and Building Department employees to perform Track Department work of adjusting the guard rail between Mile Posts CP TA 901 and CP TA 903 on May 5, 2011 instead of Track Department employees R. Gartner and T. Knopf (Carrier’s File T060711-04).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Gartner and T. Knopf shall now each be compensated for eight (8) hours 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.

On May 5, 2011, the Carrier assigned two Bridge and Building (B&B) Department employees instead of the Claimants to adjust guard rails on the MacArthur Bridge between Mile Posts CP TA 901 and CP TA 903. The parties dispute whether B&B Department employees or the Claimants (Track Department employees) should have been assigned to complete the work in question. In particular, the parties dispute how the contract language governing work assignments as between classifications of employees should apply in this case.

The Organization's position is that the Claimants, in accordance with their respective levels of seniority within the Track Department, should have been assigned to perform the work. It argues that the Carrier erred when it assigned two B&B Department employees to perform the disputed work because the scope of the work has been customarily assigned to Track Department personnel. The Organization's position is based on two arguments. First, it relies on its interpretation of Rule 2 – Classification, Rule 3 – Seniority, and Rule 6 – Department Limits as found in the Collective Bargaining Agreement. It argues that Rule 2 assigns track related work to the Track Department and not to the B&B Department. It also contends that Rules 3 and 6 specify that the seniority rights of employees are restricted to their respective Departments. Second, it offers a number of Third Division Awards, such as 22072 and 25282, which purportedly establish that the Carrier must assign work based on seniority within specific Departments.

Conversely, the Carrier's position is that B&B Department employees have been traditionally assigned to adjust guard rails on bridge structures. It notes that the Agreement language governing the scope of work (Rule 2) specifically provides that B&B Department employees may perform bridge maintenance work. The Carrier also cites several Awards in support of its position, in particular Third Division Award 27015, which found that Rule 2 does not mean employees are exclusively entitled to perform the scope of work described in all cases. Additionally, even if the work would have customarily been assigned to Track Department employees, the Carrier argues that the Agreement sanctions the use of B&B Department employees to supplement work during emergency situations. The Carrier supports this position with the language from a Memorandum of Agreement dated January 3, 2008:

“Q4. Will the maximum annual supplemental crossover B&B to track or track to B&B time in working days be limited to ninety (90) other than in emergency conditions or derailment as listed in Section 1 – Paragraph A of this Agreement?

A. Yes.” (Emphasis added by the Carrier)

The Carrier characterizes the work in question as occurring during an “emergency” situation, because it involved a mainline outage near a major rail hub – St. Louis.

In coming to its decision in this case, the Board gave great weight to the language in the January 3, 2008 Memorandum of Agreement. Ultimately, whether B&B Department employees are traditionally assigned to the type of work performed in this case is moot because the Memorandum clearly affords the Carrier great latitude to assign B&B Department employees to perform work as needed in emergency conditions. The Organization failed to offer sufficient evidence to refute the Carrier’s contention that the disputed work occurred during a period of emergency. For these reasons, the Board finds that the Carrier did not violate the Agreement when it assigned two B&B Department employees to repair guard rail. Thus, the claim must be denied.

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 June 2013.