

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41673
Docket No. MW-42064
13-3-NRAB-00003-120433**

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

**(Brotherhood of Maintenance of Way Employes 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 Bridge and Building Department Mechanic J. Harriman to perform Track Department Machine Operator work (operating a tie handler) on the MacArthur Bridge between TA002 and TA901 beginning on June 2, 2011 and continuing instead of Track Department Machine Operator M. Waldron (Carrier’s File T060211-01).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Waldron shall now ‘. . . be paid for all hours worked by mechanic John Harriman while operating this tie handling machine. Pay should be at his applicable machine operator’s rate of pay. This is a continuing claim.’”**

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.

Employee J. Black holds seniority within the Track Sub-Department and was regularly assigned to work on a tie handler machine. On June 2, 2011, Black was sent to Foreman School at the behest of the Carrier. Exactly how long Black's position was temporarily vacant is in dispute – the Organization claims the time period was 14 days, whereas the Carrier contends the time period was 11 days. In any event, the parties agree that the vacancy was within the Track Sub-Department. The Carrier assigned Bridge and Building (B&B) employee J. Harriman to the vacancy during this period. The parties dispute whether the Claimant (who holds seniority in the Track Sub-Department in various capacities) or Harriman should have been assigned to perform the work associated with this vacancy.

The Organization's position is that the Claimant should have been assigned to fill the vacancy and operate the tie handler machine during Black's absence. The Organization contends that the type of work typically performed by the tie handler is customarily assigned to Track Sub-Department employees. In support of this argument the Organization cites the scope of work customarily assigned to B&B and Track employees as outlined in Rule 2. Because there is no dispute that the Claimant held the appropriate seniority and training to perform the work required, the Organization claims the Carrier erred in assigning a B&B employee to the job. In support of this, the Organization offers a number of Awards such as Third Division Award 22072, to support its position that the Carrier must assign work based on employee seniority within specific Sub-Departments.

The Carrier's position is grounded in procedural and substantive arguments. Procedurally, the Carrier argues that because the Organization's claim referred to incorrect dates, it is defective and thus should be dismissed. The Carrier's substantive argument is that the type of work being conducted here - replacing ties on an elevated

truss, which is part of a bridge – has been customarily assigned to B&B employees. Additionally, the Carrier contends that the work in this case was classified as a major maintenance project (MTCE). It asserts that B&B employees can be assigned to MTCE projects even if the work is traditionally completed by Track Sub-Department employees, as set forth in the parties' January 3, 2008 Memorandum of Agreement.

In the final analysis, the Board finds that the Organization failed to meet its burden of proof. There is insufficient evidence in the record to refute the Carrier's contentions that (1) the type of work performed in this case can fall under the scope of B&B employees and (2) because the work fell under a major maintenance project the Carrier had the latitude to assign B&B employees to the work pursuant to the language of the January 3, 2008 Memorandum of Agreement. The key substantive arguments in this case were placed in controversy when rejected by the Carrier. In our careful review of the case record, we do not find that that the Organization rebutted the Carrier's refutations at a sufficient enough level so as to remove the controversy. Although it is well established that the Organization has the burden of proof to establish its contentions, the case record does not support in this instance that its burden of proof has been met.

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.