

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41674
Docket No. MW-42065
13-3-NRAB-00003-120440**

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 six (6) Track Department employees to perform Bridge and Building Department work of asphaltting/paving at Shreve Avenue on March 18, 2011, instead of Bridge and Building Department employees C. Carrico, R. Pruitt, C. Lovett, W. Vickers, A. Smoot and C. Perry (Carrier’s File B033011-01).
- (2) The Agreement was further violated when the Carrier failed to properly compensate employees J. Williams, J. Petri, L. Cordova, T. Davis, B. Schultz and R. Gray for performing Bridge and Building Department work of asphaltting/paving at Shreve Avenue on March 18, 2011 (Carrier’s File T033011-03).
- (3) As a consequence of the violation referred to in Part (1) above, Claimants C. Carrico and R. Pruitt shall now each be compensated for eight (8) hours at their respective straight time rates of pay and for two (2) hours at their respective overtime rates of pay and Claimants C. Lovett, W. Vickers, A. Smoot and C. Perry shall now each be compensated for eight (8) hours at their respective straight time rates of pay.
- (4) As a consequence of the violation referred to in Part (2) above, Claimants J. Williams and J. Petri shall now each be

compensated for eight (8) hours at the applicable Bridge and Building straight time rates of pay and for two (2) hours at the applicable Bridge and Building overtime rates of pay and Claimants L. Cordova, T. Davis, B. Schultz and R. Gray shall now each be compensated for eight (8) hours at the applicable Bridge and Building straight time 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 various positions within the Track or Bridge and Building (B&B) Departments. On March 18, 2011 the Carrier assigned the Claimants identified in Part 2 of the Statement of Claim) to perform paving work at the Shreve Avenue road crossing in St. Louis, Missouri. There is a dispute as to how the work in question should be characterized. The Organization characterizes the work as mixing asphalt and using machinery to pave a road crossing. The Carrier characterizes the work as using asphalt material to repair a rail crossing, which was incidental to a larger repair of the track. The parties also dispute whether work of this type should have been assigned to the Track Department or the B&B Department. Consequently, the parties also dispute how the Claimants should be compensated due to these events.

The Organization makes two arguments: (1) it claims the type of work performed here should have been assigned to the B&B Department Claimants and (2) the Track Department Claimants were not properly compensated for performing B&B work. In relationship to (1) the Organization claims that the work performed is clearly within the scope of work traditionally assigned to employees in the B&B

Department. It support of this argument the Organization cites part of Rule 2, which specifically provides that paving and work related to paving is reserved to B&B employees. It also cites Rule 6, which establishes that work is to be assigned based on seniority within each department. The Organization also argues (2) that inasmuch as the Track Claimants were clearly performing duties normally assigned to another sub-department, they are entitled to composite pay. In support of this position it cites Rule 39, which states that employees who engage in “more than one class of work” are to be paid at “the higher rate of pay for actual time worked in the higher rated position.”

Conversely, the Carrier contends that the type of work performed in this case is not the exclusive jurisdiction of employees in any department. It relies on Third Division Award 13269, which states that although work may involve the use of asphalt products, it is not considered “paving” unless there is a “pre-mixing of materials to make the repair.” The Carrier contends that, like Award 13269, the instant case involves temporary repair work that is not considered to be paving. Concerning the Claimants from the B&B Department, the Carrier contends that they are not due reparation because they were fully employed elsewhere on the claim date. The Carrier relies on a series of cases (Third Division Awards 18305, 18716, 19056, 19264 and others) to support its position that claimants are not due monetary compensation when they do not suffer any actual loss.

The Board finds that the Carrier provided sufficient evidence to demonstrate that the work made basis for the instant claim was incidental to a larger repair operation. As such, we deny Parts (1) and (3) of the claim that the work should have been assigned to B&B Department employees. However, we also find that there is enough evidence in the case record to support Parts (2) and (4) of the claim. While the nature of the work in this case may have been incidental to a larger repair and thus it was reasonable to use Track Department employees, at least some of the required work involved employees working in a higher job class than their normal assignments. As such, the Claimants identified in Part (4) shall receive composite pay equal to the difference between the pay they received for that day and the pay they would have received at the composite rate.

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.