

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41675
Docket No. MW-42084
13-3-NRAB-00003-130004

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 two (2) Signal Department employes to perform Bridge and Building Department work of painting the uprights on platforms on the MacArthur Bridge on June 24, 2011 instead of Bridge and Building employes C. Carrico, II and R. Pruitt (Carrier’s File B062411-01).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Carrico, II and R. Pruitt shall now each be compensated for eight (8) hours at their applicable Bridge and Building 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.

As Third Party in Interest, the Brotherhood of Railroad Signalmen was advised of the pendency of this dispute and chose to file a Submission with the Board.

The Claimants both have seniority within the Bridge & Building (B&B) Department. On June 24, 2011 the Carrier assigned two employees from the Signal Department instead of the Claimants to paint uprights on platforms, as well as a signal bungalow on or near the MacArthur Bridge. The materials used by the Signal Department personnel to complete the work in question were from the B&B's stock of materials. The parties dispute whether the work in question should have been assigned to Signal or B&B employees.

The Organization's position is that the type of work performed is customarily assigned to the B&B Department. Specifically, it cites part of Rule 2, which includes the language that B&B Painters are responsible for ". . . painting and glazing in connection with the construction and maintenance of bridges, buildings, miscellaneous structures and appurtenances" Because Rule 6 also establishes seniority within each department, the Organization argues that the work should have been assigned to employees holding seniority within the B&B Department. The Organization cites a series of Awards in support of its position, in particular Third Division Awards 25282 and 22072, which support the proposition that Department-based seniority lists are intended to ". . . limit the work traditionally performed by each sub-department to that department." (See Award 25282.)

Conversely, the Carrier's position is that the work performed by Signal Department personnel is not the exclusive jurisdiction of any type of employee. In support of its position, it notes that the supervising B&B Foreman instructed Signal Department employees to complete the work – an action that would be unusual if the work is customarily assigned to B&B employees. It also cites the Brotherhood of Railroad Signalman (BRS) Agreement as evidence that the Signal Department's scope of work includes maintenance and reconditioning. The Carrier also contends that the Claimants did not lose any work opportunity because they were fully employed performing other work on the date of the incident. The Carrier offers a series of cases supporting the proposition that when claimants suffer no monetary loss they are not due any reparations. (See Third Division Awards 19305, 19657, 29332, 30029 and 31171.

The work in question involves two components: (1) painting uprights and (2) painting a signal bungalow. The Board finds sufficient evidence in the record to support the proposition that (1) painting uprights is traditionally within the scope of work for B&B employees and that (2) painting signal bungalows is traditionally within the scope of work for Signal employees. The case record reveals that the Carrier assigned two Signal employees to paint uprights, and that these employees worked eight hours each performing this work. Concurrently, the Board concurs with the Carrier that the Claimants must face some sort of monetary loss in order to be compensated in cases like this. We find that in this case the Claimants did indeed suffer a loss, because they did not have the opportunity to complete the disputed work. Although the Claimants were working elsewhere on the day in question, the work appears to be of a nature that it could have been restructured so as to permit the Claimants to complete it instead of Signal Department employees. For these reasons, the claim is sustained in part and the Claimants shall receive pay equal to what they would have been paid for performing the portion of the work that day that involved painting uprights.

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.