

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when, on July 29, 30, 31 and August 1, 1985, Track Department employees were used to perform Bridge and Building Department work (installing drainage pipes) in the vicinity of Mile Post 133.7 (System File MW-85-115-439-23-A).

(2) B&B Foreman A. R. Flores, Assistant B&B Foreman F. Rodriguez and Carpenters J. R. Creighton, D. E. Johnson and A. Voelcker shall each be allowed thirty-two (32) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

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 employees 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 waived right of appearance at hearing thereon.

This Claim is that B&B Department employees, rather than Track Department employees, should have been used to construct a side drain as part of a track stabilization project. Both groups are covered by the same Agreement but are assigned on different seniority districts.

Carrier contends that such work in the past has been done by Track Department employees. It has submitted a list of 15 specific instances where this has occurred. The Organization's proof consists of a number of statements generalizing that this work has always been considered B&B Department work. In considering which proffer is persuasive, we accept that of Carrier because it cites specific instances whereas that of the Organization is generalized; it fails to list a single specific instance where a similar project was done with B&B employees.

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Docket No. MW-27339  
89-3-86-3-555


The Organization has the burden of proving the basic elements of its Claim. On this record we are not persuaded that this has been accomplished. The Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.