

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
(  
( Union Pacific Railroad Company (former Missouri  
( Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Track Foreman N. L. McCoy instead of B&B Foreman B. L. Davis to provide flagging protection for bridge work being performed on Bridge 312.5 in Guion, Arkansas beginning July 20, 1987 (Carrier's File 871063).

(2) As a consequence of the aforesaid violation, B&B Foreman B. L. Davis shall be allowed pay at the B&B foreman's rate for all straight time and overtime hours Track Foreman N. L. McCoy performed the flagging work identified in Part (1) above, beginning July 20, 1987 and continuing until the violation was corrected."

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.

In 1987, the Carrier contracted with an outside firm for the construction of a series of bridges. The Carrier assigned a Track Foreman of the Track Subdepartment "to provide flagging and other related duties relative to the protection of both the Carrier's and the contractors' operations." A Bridge and Building Subdepartment employee was assigned to perform inspection of the contractor's work.

It is the Organization's Claim that the Carrier should have assigned a Bridge and Building Foreman, rather than a Track Foreman, for the flagging work.

The dispute here rests on contentions by each party which are not necessarily contradictory to each other. The Organization states that flagging work at bridges has "customarily and historically" been assigned to Bridge and Building Subdepartment employees, while the Carrier states that flagging work in general is performed by employees in a wide variety of classifications. Given these two contentions, the reliance on "past practice" is not persuasive.

The Scope Rule at issue here lists positions only and makes no reference to flagging (or to other specific functions).

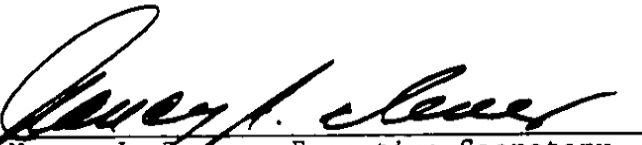
In the Board's view, the flagging location, by itself, cannot be the determinative factor in deciding that the work "belongs" to a single Subdepartment. Given the particular circumstances here involved, the Board finds the Claim for the exclusive right to the flagging assignment is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.