

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29980
Docket No. MW-28839
93-3-89-3-232

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Carrier violated the Agreement when it assigned Track Department forces instead of B&B Carpenters to repair a broken carry-over rail on Bridge 198 on Saturday, September 5, 1987 (System File BJ-11-87/UM-20-87).
- (2) As a consequence of the aforesaid violation, B&B Carpenter Foreman T. Legner and Carpenters M. Bachmann and M. Clinton shall each be allowed five and one-half (5 1/2) hours of pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Claimants are employed by the Carrier as Bridge & Building Foreman and Carpenters. At the time this dispute arose, Claimants' workweek schedule was Monday through Friday with Saturday and Sunday as rest days.

On Saturday, September 5, 1987, the Carrier sent a track gang to Bridge 198 to correct a misalignment of a carry-over rail. The

Organization filed a claim contending that "the maintenance and repairs to bridges has customarily, historically and traditionally been performed by the Carrier's Bridge & Building Department forces". And, therefore, the Carrier was in violation when it assigned a track gang to perform B&B work.

The Carrier denied the claim contending that the carry-over rail was not broken but misaligned. In order to correct the problem, the track gang "tamped the ties and relined and regauged the rail, where necessary, which is trackmen's work." Therefore, the Carrier contends it did not violate any Rule of the Agreement.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it assigned the repair work on September 5, 1987, to other than B&B employees. Therefore, the claim must be denied.

The Board recognizes that the Rule requires that certain bridge work must be assigned to B&B employees. That work includes maintenance and repairs to bridges. However, the record in this case is not clear that the repair work that took place on the date in question and was assigned to non-B&B employees was bridge repair work. The Carrier contends and submits evidence that the problem in this case was "running rail" on the bridge approach which resulted in the misalignment of the "carryover rails" on the east side of Bridge 198. The Organization acknowledges that if that was the work involved, "there would be no reason for the instant claim."

Although the four statements submitted by the Claimants verify that B&B employees always do the work on open-deck bridges, none of the statements describes the type of work that was performed in September 1987 that led to this dispute. None of them states that the work at issue is exactly the work that B&B employees have always performed.

Since the Organization bears the burden of proof in cases of this kind, and it has not been convincingly demonstrated that the work that was performed is exclusively B&B work, we must find that the claim must be denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.