

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31500
Docket No. MW-31029
96-3-92-3-856

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The Carrier violated the Agreement when it assigned track forces instead of B&B forces to install nine (9) culverts between Mile Posts 3 and 28 on the Memphis Subdivision, Nashville Division Seniority District on September 4, 5, 6, 9, 11 and 16, 1991 [System File 11(48)(91)/12(92-05) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, B&B employees J. A. Kail, T. J. Powell, L. G. Rich, J. R. Wade and M. K. Gill shall each be allowed eight (8) hours' pay at their respective rates of pay for each of the claim dates listed in Part (1) above."

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 waived right of appearance at hearing thereon.

This dispute involves the Carrier's assignment of Track Subdepartment, rather than B&B Subdepartment, employees to perform certain work on the Memphis Subdivision on the claim dates specified. The Organization contends, and the claim avers, that the work in question was the installation of culverts. It argues that Third Division Award 19028 on this property, establishing that Rule 41(a) and (e) contemplates that installation of pipe is within the purview of the B&B Subdepartment, is determinative. The Organization avers that there is no difference between drains and culverts, and that there is no limitation in the Agreement concerning where the installation of culverts is to occur.

The Carrier defended its assignment on the property by stating that the work in issue was tearing out and rebuilding railroad crossings including drains under the crossings, which Track Subdepartment forces had always performed in their rehabilitation of crossings. The Carrier contends that the B&B Subdepartment never maintained drains or culverts under road crossings, while admitting that the work of culverts under track has historically been maintained by B&B forces, and notes that Third Division Award 19028 does not mention anything about road crossings. The Carrier argues that an irreconcilable conflict of fact exists, and that the Organization has not met the high burden of proof required in cases involving a jurisdictional question between classes of employees represented by the same Organization.

The Board reviewed the record in this case, which consists mainly of the claim, Carrier's responses and the Organization's appeal, and we find that the Organization has not met its burden of proving that the Carrier violated the Agreement. In light of the Carrier's assertions that B&B Subdepartment forces never maintained drains under road crossings and that Track Subdepartment employees did so while rehabilitating crossings, coupled with the fact that Third Division Award 19028 does not deal with culvert work under railroad crossings, it was incumbent upon the Organization to present some evidence refuting this assertion or showing that culvert maintenance by B&B Subdepartment forces did include railroad crossings. Its failure to do so must result in a denial of this claim. Third Division Awards 20408, 17833, 16482.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.