

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31616
Docket No. MW-31167
96-3-93-3-9**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Mechanical Department Blacksmith Billy Gonser to perform Maintenance of Way Department work (paint stationary equipment) in the Blacksmith Shop at Oneonta, New York from September 9 through 20, 1991 (Claim No. 66.91).

2. The Agreement was further violated when the Carrier assigned Mechanical Department Carmen T. Burns, G. Bratcher, N. Stiefel and J. Bradley to perform Maintenance of Way Department work (removed overhead hoist track) at the former Wheel Shop, Oneonta, New York on September 26, 27 and 30, 1991 (Claim No. 67.91).

3. The Agreement was further violated when the Carrier assigned Mechanical Department employees T. Burns, N. Stiefel and J. Bradley to perform Maintenance of Way Department work (removed ventilation blower) at the former Wheel Shop, Oneonta, New York on September 27, 1991 (Claim No. 68.91).

4. The Agreement was further violated when the Carrier assigned Mechanical Department Carmen J. Bradley, J. Mott and T. Burns to perform Maintenance of Way Department work (paint preparation) in Shop 7 at Oneonta, New York on October 8 and 9, 1991 (Claim No. 69.91).

5. The Agreement was further violated when the Carrier assigned Mechanical Department employees R. Thomas and D. Thompson to perform Maintenance of Way Department work (removed and hauled sand from the paint facility) at Oneonta, New York on October 11, 1991 (Claim No. 71.91).

6. The Agreement was further violated when the Carrier assigned Mechanical Department Carmen N. Lossi, J. Mott and J. Winn to perform Maintenance of Way Department work (prepared and painted the large press) at Shop 7, Oneonta, New York on October 16 and 17, 1991 (Claim No. 75.91).

7. As a consequence of the violation referred to in Part (1) above, B&B employees D. Welch, G. Swift and B. Allmendinger shall each be compensated at their respective rates, for an equal proportionate share of the thirty-five (35) man-hours expended by the Mechanical Department employees in the performance of the work in question.

8. As a consequence of the violation referred to in Part (2) above, B&B Foreman D. Welch and B&B Mechanics G. Swift and B. Allmendinger shall each be compensated at their respective rates of pay, for an equal proportionate share of the forty-nine (49) man-hours expended by the Mechanical Department employees in the performance of the work in question.

9. As a consequence of the violation referred to in Part (3) above, B&B Plumbers J. O'Kelly, W. Lyker and R. Brown shall each be allowed five (5) hours' pay, at their respective rates for time expended by the Mechanical Department employees in the performance of the work in question.

10. As a consequence of the violation referred to in Part (4) above, B&B employees G. Swift, D. Welch and B. Allmendinger shall each be allowed sixteen (16) hours' pay, at their respective rates for time expended by the Mechanical Department employees in the performance of the work in question.

11. As a consequence of the violation referred to in Part (5) above, Messrs. H. Utter and G. Shove shall each be allowed two (2) hours' pay, at their respective straight time rates for time expended by the Mechanical Department employees in the performance of the work in question.

12. As a consequence of the violation referred to in Part (6) above, B&B employees D. Welch, G. Swift and B. Allmendinger shall each be allowed sixteen (16) hours' pay at their respective rates, for the forty-eight (48) man-hours expended by the Mechanical Department employees in the performance of the work in question."

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.

In September and November 1991, Mechanical Department employees performed various tasks which the Organization maintains should have been assigned to B & B employees. Claim No. 3, involving the removal of a ventilation blower, has been resolved on the property and withdrawn from the Board. With respect to the remaining claims, the Organization contends that the work is traditional maintenance of way work as defined in Rule 1 of the Agreement. Carrier contends, however, that Mechanical Department employees historically have performed the work in question.

Rule 1, on its face, does not reserve the work in question exclusively to employees covered by the Agreement. Consequently, the Organization had the burden of proof

in each claim to show that historically the employees subject to the Agreement have exclusively performed such tasks. Our review of the record leads us to conclude that the Organization failed to carry its burden of proof with respect to the issue of exclusivity. Consequently, the claims must be denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.