

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37645
Docket No. MW-36604
05-3-01-3-92

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Subdepartment employes W. Huffman, C. Anderson, L. Rucker, B. Markum, G. Jarvis, J. Coop and D. Ehrhard to perform Bridge & Building (B&B) Subdepartment work (install new culverts and related work) in the vicinity of Mile Posts 130.5 and 133.7 on the Spokane Subdivision on November 4, 1999 instead of B&B Carpenters J. L. Geiss, R. F. Kibel, F. Navarete and F. E. Castorena (System File J-9908-56/1219344).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. L. Geiss, R. F. Kibel, F. Navarete and F. E. Castorena shall now each be compensated for a proportionate share of the total hours worked by Track Subdepartment employes on November 4, 1999 in the performance of the aforesaid work at their respective straight time rates of pay.”

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 were given due notice of hearing thereon.

The Claimants hold seniority as Carpenters in the Bridge & Building (B&B) Subdepartment on the Oregon Division.

On November 4, 1999, the Carrier assigned and used Track Subdepartment employees to install two new culverts at Mile Posts 130.5 and 133.7 on the Spokane Subdivision. The aforementioned employees unloaded the culverts and other related materials including stone ballast and performed other related duties in connection with the installation of the two culverts. The Track Subdepartment employees installed a culvert measuring four feet in diameter and 40 feet in length at Mile Post 130.5. In addition, they were used to install a culvert measuring six feet in diameter and 40 feet in length at Mile Post 133.7. The Track Subdepartment employees performed the subject work beginning at 6:00 A.M. and continued until the work was completed on the same day.

Pursuant to this action, the Organization submitted a claim contending that the Carrier violated the Agreement when it assigned Track Subdepartment employees to install the culverts. First, it claims that the work of installing culverts in track beds is recognized as work belonging to, and customarily and historically performed by B&B forces. The Organization contends that past practice confirms its position.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the work was properly performed the B&B Subdepartment employees. It further contends that both classes (B&B Carpenters and Track Subdepartment employees) are members of the same craft. According to the Carrier, the Board has repeatedly pointed out that the burden of proof is even more heavily placed on the Organization when employees from the same craft dispute work assignments. The Carrier contends that this position is substantiated by Awards involving the instant parties.

The Board cannot find that the Organization has been able to meet its burden of proof. In order to sustain its position, the Organization must be able to prove that only B&B Subdepartment employees can perform this type of work to the exclusion of

Track Subdepartment employees or any other employee classification under the BMWE Agreement. The Organization has been unable to prove that the work of installing culverts has always been recognized as being assigned to and performed by Bridge & Building Subdepartment Carpenters. In addition, there has not been a showing of any substantial past practice or agreement to support a binding past practice. See Third Division Award 21495.

After a review of all evidence, there has been no showing that the work has been reserved to B&B Carpenters, by either custom, tradition, specific language or practice to any particular seniority group or Subdepartment (B&B or Track) and thus such work may be performed by either group.

Thus, having determined that the Organization has been unable to prove that the work of installing culverts is exclusively reserved to B&B Subdepartment Carpenters, we find that the Organization has not met its burden of proof and the claim is therefore 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 7th day of December 2005.

****CORRECTED****

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FINDINGS:

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

The Board cannot find that the Organization has been able to meet its burden of proof. In order to sustain its position, the Organization must be able to prove that only B&B Subdepartment employees can perform this type of work to the exclusion of Track Subdepartment employees or any other employee classification under the BMWE Agreement. The Organization has been unable to prove that the work of installing culverts has always been recognized as being assigned to and performed by Bridge & Building Subdepartment Carpenters. In addition, there has not been a showing of any substantial past practice or agreement to support a binding past practice. See Third Division Award 21495.

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Thus, having determined that the Organization has been unable to prove that the work of installing culverts is exclusively reserved to B&B Subdepartment Carpenters, we find that the Organization has not met its burden of proof and the claim is therefore denied.

AWARD

Claim denied.

ORDER

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