

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37668
Docket No. MW-37317
05-3-02-3-338

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 Employes
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned B&B Department employes S. Kirtley, B. Step, N. Carpenter, B. Carpenter, D. Nickel, B. Lovall, K. Carpenter, R. Bardsdale, C. Stillion, L. Miracle and D. Ebling to perform Track Department work (load rail and scrap) at Queensgate between Mile Posts CA 664.0 and CA 665.0 on January 8, 2001 instead of Track Department employes T. McNary, M. Ryan, P. Trappe, R. Lambert, T. Abbott, P. Barnes, G. Johnson, D. Smedley, G. Hornsby, R. Talbott and C. Borchers [System File I49620501/12(01-0192)CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. McNary, M. Ryan, P. Trappe, R. Lambert, T. Abbott, P. Barnes, G. Johnson, D. Smedley, G. Hornsby, R. Talbott and C. Borchers shall now ‘...be paid an equal proportional share of 110 hours straight time and 3½ hours time and one half at their respective straight time and overtime rates of pay for the date of January 8, 2001.’ ”

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 on the Cinn-Chicago Seniority District of the C&O Business Unit Service Lane Work Territory. On the date in question, they were assigned and working their respective positions.

On January 8, 2001, Roadmaster M. Little assigned 11 B&B Department employees to load rail and scrap at Queensgate between Mile Posts CA 664.0 and 665.0. They used a track crane (Machine No. RTC 9402) and expended a total of 110 straight time hours and three and one-half overtime hours in the performance of this work.

Pursuant to this action, the Organization submitted a claim contending that the Agreement was violated when the Carrier assigned B&B Department employees to perform Track Department work instead of assigning the Claimants. According to the Organization, picking up rail and other track material has historically been performed by employees holding seniority in the Track Department. In addition, the Organization claims that the Carrier cannot rebut its prima facie case.

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 by members of the B&B Department. It further argues that the B&B Department employees who were assigned to pick up the material were the same employees whose work led to the need for the scrap pick-up. The Carrier contends

that it is incongruous for a clean-up to be necessitated by B&B Department employees and then to assign employees from the Track Department to perform the clean-up. The Carrier also contends that both classes of employees (B&B Department employees and Track Department 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 numerous 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 Track Department employees can perform this type of work to the exclusion of B&B Department employees or any other employee classification under the BMW Agreement. After a review of the evidence in this matter, the Organization has been unable to prove that the work of cleaning up track debris after tie replacement has always been recognized as being assigned to and performed by Track Department personnel. In addition, there has not been a showing of any substantial practice to support a binding past practice. See Third Division Award 32020.

Stated differently, there has been no showing that the work has been reserved to the Track Department by either custom, tradition, specific language or past practice to any particular seniority group or Department (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 loading rail and scrap materials is exclusively reserved to Track Department personnel, we find that the Organization has not met its burden of proof and the claim is therefore denied.

AWARD

Claim denied.

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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 21st day of December 2005.