

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39922
Docket No. MW-39688
09-3-NRAB-00003-060542
(06-3-542)

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

(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak) –
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Department employees T. Graham, R. Cleto and P. Collins to perform Bridge and Building (B&B) Department work (install ‘temp’ platform/pedestrian crossing) in the gauge side of Track 2 at the Clinton Station in Clinton, Connecticut on May 20, June 2 and 9, 2005, instead of B&B Department employees K. Butler, A. Bogan and R. Jeffcoat (Carrier’s Files NEC-BMWE-SD-4532, NEC-BMWE-SD-4533, NEC-BMWE-SD-4534 and NEC-BMWE-SD-4535 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. Butler, A. Bogan and R. Jeffcoat shall now be compensated a total of fifteen (15) hours 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 claims concern the Carrier's assigning the work of installing a pedestrian crossing to three employees of the Track Department rather than the Claimants who were employees of the Bridge & Buildings Department. The Organization relies primarily on the Scope and Classification Rules, observing that the Classification Rule describes the work of B&B Mechanic as, "Construct, repair and maintain bridges, buildings and other structures," in contrast to the description of the work of Trackman, "Constructs, maintains repairs, inspects and dismantles track and appurtenances thereto, including right-of-way maintenance." These descriptions are relatively general in nature. The work involved did not concern construction but rather, as the Carrier maintained during handling on the property and as was not refuted by the Organization, the attachment of a pre-fabricated rubber crossing to the track. Furthermore, Paragraph F of the Classification Rule expressly provides:

"The listing of work under a given classification is not intended to assign work exclusively to that classification."

Accordingly, we cannot say that the Agreement exclusively reserved the work for B&B Department employees.

It is well-established that in a case such as this, the Organization has the burden to prove that in practice the work has been performed exclusively by the Department or Classification claiming the work. See e.g., Third Division Awards 33970, 28263 and 25462. In an effort to meet its burden, the Organization submitted written statements from a number of B&B employees averring that they had performed the work of installing pedestrian crossings at Amtrak stations and/or

Form 1
Page 3

Award No. 39922
Docket No. MW-39688
09-3-NRAB-00003-060542
(06-3-542)

witnessed B&B employees performing the work. However, although these statements may establish that B&B employees have performed the work in question, they do not establish that B&B employees exclusively did so. The Organization failed to carry its burden of proving exclusivity and, therefore, the claim 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 31st day of August 2009.