

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40895
Docket No. MW-41024
11-3-NRAB-00003-090363**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned B&B Supervisors H. King and R. Ulum to perform Maintenance of Way work of unloading roadbase at Bridge Mile 26.83 on the Eagle Pass Subdivision on January 12, 2008 (System File MW-08-49/1500453 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Gibson and D. Davis, Jr. shall now each be compensated for ten (10) hours at their respective overtime 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.

This dispute involves the Carrier's assignment of Supervisors to work with the Georgetown Dump Train, which is specialized equipment, coordinating its movement and the placement of ballast through the use of a GPS and on-board computer. The basis of the Organization's claim is that the work involved is unloading and spreading ballast on a bridge, which is scope-covered work that has historically been performed by employees under the Agreement. The Organization seeks compensation for the lost overtime opportunity on behalf of the Claimants, a Bridge Foreman and a Bridgeman in the B&B Sub-department.

The Organization argues that Supervisors are not permitted to perform bargaining unit work and the Carrier cannot disregard the Claimants' right to perform this scope-covered work due to cost considerations, citing Third Division Awards 13236, 13646, 31233, 31235 and 31388; Public Law Board No. 5557, Award 1. The Organization asserts that it is the nature of the work that is controlling, not the method of doing it or the equipment used, and that a change in technology does not remove work from the scope of the Agreement, relying on Third Division Awards 8217, 10229, 11881, 19657, 20090 and 20372. It notes that Claimant Gibson gave a detailed account of his past performance of the work, which was acknowledged by his Supervisor.

The Carrier contends that the Organization failed to prove that there was any scope-covered work performed by the Supervisors on the claim date, a prerequisite to finding a violation herein, citing Third Division Awards 28789, 31821, 31984 and 34050. It explains that the Georgetown Dump Train is an automated train that places ballast and other material without using any labor, and that a single Technician operates the computer on the train that determines when to unload the material. The Carrier asserts that it is historical practice to have a Supervisor coordinate the movement of the train, as shown by Manager Hardy's statement that Gibson only performed this type of work on a few occasions and that it is routinely performed by ARASA Supervisors. The Carrier points out that the Organization was given notice ten years earlier that their work of walking alongside the trains,

opening the doors and spreading the rock, when necessary, was going away through technology. It argues that the Carrier determines the manner of conducting its business, citing Second Division Award 3630, and that work associated with supervising the unloading of ballast from, and the operation of, the Georgetown Dump Train has never been scope-covered.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of establishing that the work in dispute is specifically scope-covered or has been historically performed by bargaining unit employees, which is required in order to sustain a claim of this nature, and was a burden found to have been met in the cases relied upon by the Organization. The work that was performed by the Supervisors was not the unloading and spreading of ballast as it had been performed a decade earlier by employees walking with the train and physically performing those functions. Rather, the Supervisor was operating an automated train through use of computer and GPS technology, and there was no physical labor involved. The record confirms that, on almost all occasions because the Carrier began using the Georgetown Dump Train, its operation has been assigned to Supervisors, and only in a few instances to one of the Claimants. Absent a showing that this is work reserved to employees under the Agreement, the claim must fail. See Third Division Awards 28789, 31821 and 31984.

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 10th day of March 2011.