

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41671
Docket No. MW-42062
13-3-NRAB-00003-120429**

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

**(Brotherhood of Maintenance of Way Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned four (4) Bridge and Building Department employees to perform Track Department work of cutting brush and spraying weed killer at the north end of Madison Yard on June 24, 2011 instead of Track Department employees R. Gartner, T. Knopf, T. Davis and F. Beaston (Carrier’s File T062411-02).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Gartner, T. Knopf, T. Davis and F. Beaston shall now each be compensated for eight (8) hours at their applicable 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 established and hold seniority in various capacities within the Track Department. On June 24, 2011, the Carrier assigned four Bridge and Building (B&B) Department employees instead of the Claimants to cut brush and spray weed killer along the tracks in Madison Yard. The parties dispute whether the work in question should have been assigned to B&B Department employees or Track Department employees.

The Organization's position is that the type of work performed has been customarily and routinely assigned to Track Department personnel. The Organization's arguments are based on its interpretations of Rules 1, 2, 3, and 6 of the Agreement. In particular it notes that Rule 2 does not include maintaining or repairing track in the scope of work established for B&B Department employees. Given that Rule 6 establishes that employees are on seniority tracks based on Department, the Organization argues that the Claimants should have been assigned to perform the work in question. In support of its contention that work of a certain class of employee (based on Department) should not be assigned to employees of a different class, the Organization cites Third Division Awards 22072 and 25282.

Conversely, the Carrier's position is that the work in question is not exclusively reserved to any specific employee classification or Department. In describing the work being performed, the Carrier characterizes the work as being necessary to "eliminate an unsafe condition." The Carrier argues that Track Department employees may have participated in this type of work before, but such participation does not mean that the work is exclusively reserved to Track Department personnel. The Carrier contends that the Claimants are not due reparation because they were fully employed elsewhere on the claim date. The Carrier relies on a series of Third

Division Awards (18305, 18716, 19056, 19264, and others) for the proposition that claimants are not due monetary compensation when they do not suffer any actual loss.

After a careful review of the on-property case record, the Board finds that the Organization failed to meet its burden to establish that the disputed work falls exclusively within the scope of work reserved to Track Department employees. The nature of the work in question – essentially manual labor involving spraying weed killer – does not appear to be exclusively reserved to any particular Department. For this reason, 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 18th day of June 2013.