

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No.41676
Docket No. MW-42085
13-3-NRAB-00003-130021**

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

**(Brotherhood of Maintenance of Way Employes 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 employes to perform Track Department work of removing large ballast and rocks at the north end of Madison Yard on June 24, 2011 instead of Track Department employes R. Gartner, T. Knopf, F. Beaston and T. Davis (Carrier’s File T062411-01).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Gartner, T. Knopf, F. Beaston and T. Davis shall now each be compensated for three (3) 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) employees instead of the Claimants to remove large ballast and rocks at Madison Yard. The parties dispute whether B&B employees or the Claimants (as Track -Department employees) should have been assigned to complete the work. In particular, the parties dispute how the contract language governing work assignments as between various classifications and employee seniority should apply in this case.

The Organization's position is that the Claimants, in accordance with their respective seniority within the Track Department, should have been assigned to perform the work. It argues that the Carrier erred in assigning four employees from the B&B Department to complete the work because the scope of the work has been customarily assigned to Track Department employees. The Organization's position is based on two arguments. First, the Organization relies on its interpretation of Rule 2 – Classification, Rule 3 – Seniority, and Rule 6 – Department Limits as found in the Collective Bargaining Agreement. It argues that because Rule 2 states, in part, that “. . . miscellaneous labor work not performed by employees in other classifications shall constitute Track Labor” that the work in this case should have been assigned to the Track Department. It also contends that Rule 3 and 6 establish the seniority rights of employees as being restricted to their sub-departments. Second, it offers a number of Awards such as Third Division Awards 25282 and 22072, to support its position that the Carrier must assign work based on seniority within specific departments.

Conversely, the Carrier's position is that the work in this case – picking up large rocks by hand – is not the exclusive jurisdiction of any employee in any department. It notes that the language governing the scope of work (Rule 2) specifically does not entail that Track Department employees work on “repairing,

constructing, or stabilizing any track or road bed.” The Carrier does not dispute that Track Department personnel may have worked to correct this type of unsafe working condition previously, but such work is still not their exclusive jurisdiction. The Carrier also contends that the Claimants did not lose any work opportunity because they were fully employed performing other work on the date of the incident. The Carrier offers a series of cases supporting the proposition that when claimants suffer no monetary loss they are not due any reparations, including Third Division Awards 19305, 19657, 29332, 30029, and 31171.

The Board finds that the Organization did not meet its burden of proof in demonstrating that the removal of rocks and ballast by hand is the exclusive job of Track Department employees. The parties seem to agree the work in this case was generalized manual labor, which we hold does not appear to be the exclusive scope of work for any class of employee. We note Rule 2 provides “. . . miscellaneous labor work not performed by employees in other classifications shall constitute Track Labor.” (Emphasis added) The Board interprets this portion of Rule 2 to broadly mean that the Carrier has latitude when assigning manual labor to employees in other departments.

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.