

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42070
Docket No. MW-42274
15-3-NRAB-00003-130262**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier removed MW Electrician Gang Foreman A. Saxon from working on a 60 cycle power feed and distribution project at Lamokin Substation in Chester, Pennsylvania beginning on October 31, 2011 and continuing until December 8, 2011 (System File NEC-BMWE-SD-5014 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Saxon shall now be allowed two hundred (200) hours at his straight time rate of pay for a total of five thousand eight hundred twenty-eight dollars (\$5,828.00).”**

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.

On December 20, 2011, the Organization filed this claim asserting that the Carrier had violated the Scope and Work Classification Rule of the parties' Agreement when it removed the Claimant from a project installing a 120-volt/60-cycle power feed at the Lamokin Substation. The claim asserted that the Carrier improperly replaced the Claimant with Electric Traction (ET) employees to complete the project. The Organization contends that the work in question is defined as a Bridge and Building (B&B) and Track Department responsibility and is not ET Department work. The on-property record of the Carrier's denials of the claim and subsequent appeals by the Organization indicates that the final decision by the Carrier was issued on October 10, 2012, wherein it asserted that the Organization failed to meet its burden to prove that the Agreement, or a binding past practice, had been violated, because there was no evidence presented that the Claimant had the right to perform the work to the exclusion of the ET Department personnel.

The following contract language from the SCOPE AND WORK CLASSIFICATIONS provision of the Agreement is relevant to the resolution of this dispute:

"A. SCOPE

These rules, subject to the exceptions herein, shall constitute the agreement between National Railroad Passenger Corporation, hereinafter referred to as 'AMTRAK,' and its respective employees of the classifications herein set forth, represented by the Brotherhood of Maintenance of Way Employees, hereinafter referred to as Brotherhood, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repairs and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, including catenary system, third rail, substations and transmission in connection with electric train operation, and work which as of June 1, 1945, was being performed by these employees, such as station lighting, power

lines, floodlights, on elevators and drawbridges, and shall govern the rates of pay, rules and working conditions of such employees.

Nothing in this Agreement shall be construed to require the transfer of work now being performed by AMTRAK employees not covered by this Agreement to employees covered by this Agreement.

* * *

1. **EXCEPTIONS**

F. Articles I through III, inclusive, of this Scope Rule are the Work Classification Rules of the various classifications of employees in the Maintenance of Way and Structures Department covered by this Agreement. Where reference is made in this Agreement to work generally recognized as Maintenance of Way work or work of a particular classification. . . . The listing of work under a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of existing rules or agreement between the parties hereto.

* * *

B. **WORK CLASSIFICATION RULE**

ARTICLE I - BRIDGE AND BUILDING AND TRACK DEPARTMENTS

The description of each position title outlined in this Article is intended to cover the primary duties of that position and, in addition, it is understood that each title comprehends other work generally recognized as work of that particular classification.

1. (a) **Foreman** - Directs and works with employees assigned under their jurisdiction.

* * *

32. Electrician - except Northern District - Installs and repairs electrical equipment and wiring.

* * *

ARTICLE III - ELECTRIC TRACTION DEPARTMENT - except Northern District

The description of each position title outlined in this Article is intended to cover the primary duties of that position and, in addition, it is understood that each title comprehends other work generally recognized as work of that particular classification.

3. Foreman-Substation - Plans, supervises, directs and coordinates the construction, installation, maintenance and testing of substations and substation apparatus.

* * *

16. Electrician-Substation - Constructs, installs, maintains, repairs and tests Substation switching apparatus, cable controls and associated batteries. Operates Substations and protects workmen and work equipment in proximity of high tension lines or apparatus.”

The Organization argues that the Scope and Work Classification provisions establish separate seniority for various classes of employees with distinct classifications of work and job duties. The Organization asserts that the Agreement manifests the parties’ agreement that the work performed by the employees of the ET Department was distinct from the work of the B&B Department. Therefore, the Claimant was improperly removed from work that he “historically and customarily performed.” The Organization cites numerous NRAB Awards addressing “work

reservation rules” and the principle that work performed “by a classification is reserved to that classification.”

Conversely, the Carrier contends that the Organization failed to meet its burden to prove that the Agreement had been violated. The Carrier asserts that:

“ . . . work inside the substation confines that support[s] substation apparatus accrues to the substation forces, which include Foreman (Substation) (Construction) Albert Gesner, Electrician (Substation) - CDL (Construction) John Wyatt and Electricians - CDL (Construction) Chuck Dreisbach and Jorge Lozada. Both the Claimant and the Substation Electricians are qualified electricians and are capable of performing 60 Hz work.”

Furthermore, the Carrier contends that Section 1. Exceptions, paragraph F of the Scope Rule, specifically states that work of one classification does not accrue exclusively and “that employees of one classification may perform work of another classification”

The Board finds that the Organization failed to satisfy its burden to prove with substantial evidence that the Claimant was entitled to the work in question to the exclusion of the Substation Electricians. The clear and unambiguous language of the Scope Rule, specifically paragraph F cited herein, preserved the Carrier’s authority to assign the work in question to the Substation Electricians instead of the Claimant. Even where the result may be harsh or not in accordance with the expectations of a party, the existing language of the Agreement, where it is clear and unequivocal, must be enforced. No other meaning can be derived from the provision.

The numerous Awards cited by the Organization are factually distinguishable from the dispute before us in the instant case. Nothing in those Awards indicates the presence of specific contract language comparable to section F of the Scope Rule governing this dispute. The Board concludes that our Findings are specific to the facts and circumstances in the instant record and are limited to those employees covered by the Scope Rule of the Agreement applicable to this dispute.

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Based on the foregoing, we find that the record lacks the requisite substantial evidence that the Carrier violated the parties' Scope and Work Classification Rules.

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 19th day of March 2015.