

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42538
Docket No. MW-42127
17-3-NRAB-00003-130072**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign B&B Foreman J. Santos to inspect track and bridges behind the operation of the rail grinder working on the Clinton and Geneva Subdivisions between Clinton, Iowa and Nelson Yard, Illinois beginning on August 8, 2011 and continuing until August 11, 2011 and instead assigned Supervisor K. Wilson (System File J-1101C-363/1560312 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Santos shall now be compensated at his respective and applicable rates of pay for all straight time and overtime hours expended by Supervisor K. Wilson in the performance of the aforesaid work on August 8, 2011 through August 11, 2011.”**

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 is a case involving allegations of contracting out of work. The Organization says the contracting out was not permissible.

The Rules in question are as follows:

“RULE 1 - SCOPE

* * *

B. Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common Carrier service on the operating property...

RULE 2- SUBDEPARTMENTS

The following Subdepartments are within the Maintenance of Way and Structures Department.

- A. Bridge and Building Subdepartment**
- B. Track Subdepartment**
- C. Roadway Equipment Repair Subdepartment**

A. B&B Subdepartment

- 1. B&B & Painter Foreman**
- 2. B&B & Painter Assistant Foreman**
- 3. Scale Inspectors**
- 4. Truck Drivers**
- 5. B&B Carpenters**
- 6. Masons**
- 7. B&B Helpers**

- 8. Bridge Tenders
- 9. Bridge Flagmen
- 10. Cooks
- 11. Machine Operators
- 12. Assistant Machine Operators

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RULE 3 - CLASSIFICATION OF WORK

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B. An employee directing the work of employees and reporting to officials of the Company shall be classified as a Foreman.

* * *

E. An employee assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures including the building of concrete forms, etc., shall be classified as a B&B Carpenter.

* * *

I. An employee qualified and assigned to the operation and servicing of machines used in the performance of Maintenance of Way and Structures Department work shall be classified as a Machine Operator.

* * *

K. An employee assigned to operate a truck used in the performance of Maintenance of Way and Structures Department work shall be classified as a Truck Driver.

* * *

D. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Company.

* * *

RULE 5 - SENIORITY DISTRICTS

Seniority Districts are identified as follows: B&B Track

**B-2 T-2
B-3 T-3
B-4 T-4
B-7 T-7
B-8 T-8
B-9 T-9**

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RULE 7 - SENIORITY LIMITS

A. Separate seniority in the B&B and Track Subdepartments shall be established in the following classes: B&B Subdepartment

- 1. B&B Foreman (including Classes 2&3)**
- 2. Assistant B&B Foremen (including Assistant Foremen - Truck Drivers)**
- 3. Truck Drivers***
- 4. B&B Carpenters (including Masons and Lead Carpenters)***
- 5. B&B Helpers, Bridge Tenders and Cooks**

* * *

TRACK - B&B MACHINES

H. The following machines, not listed as Class A, B, or C machines, are used in common in the B&B and Track Subdepartments, i.e., at times on Track work, at other times on B&B work. In order to permit the assigned operator to stay with

the machine, regardless of the Subdepartment in which working, a separate seniority roster shall be established for operators of such machines. Where there are no qualified bidders holding seniority on such roster for such machine operator positions, vacancies shall be bulletined to both B&B and Track Subdepartment employees who shall be eligible to bid for such positions. Assignment to the vacancy will be based upon the oldest retained seniority date.

Cranes of less than 20-ton maximum lifting capacity Pettibone
Speed Swing
Earth Drill Blacktop Roller Car Top Unloader Crawler Crane
Crawler Loaders and Dozers Boom Truck
Motor Grader
Tie Cranes
Rubber Tired Tractor Trencher
Portable Air Compressor (Rail-Mounted) W-64 Derrick Car
Lo-Boy Backhoe
Idaho Norland Snow Blower Articulated Front End Loader
Hydro-Scopic Excavator Unimog
Fuel Service Truck
Truck With Plows and Salt Spreaders Skid Loaders with
Attachments Sheep's Foot"

The Organization says the Carrier assigned Supervisor Wilson to work with the rail grinding train and perform inspection duties, starting on August 8 and continuing through August 11, 2011. They say that such inspection work is specifically reserved to the B&B Department pursuant to their Agreement. They further say that the Claimant was not called for the bridge inspection service, and should have been.

The Carrier says that Supervisor Wilson was assigned to follow the rail grinding train to keep a fire watch and to make sure the work was being properly done. They say that this is not work exclusive to the Organization. The Carrier points out that Mr. Wilson followed the train over many miles of track, which may or may not have included bridges, but certainly was in no way limited to bridge inspections.

The Board has had the benefit of a complete record before it. The Board finds, based upon the complete record, that Supervisor Wilson did, in fact follow the rail grinding train to supervise it and to provide a fire watch. Further, the Board finds that this is not work exclusive to the Organization, nor is it simple bridge inspection, as alleged. As a result, the Organization has failed to meet its burden of proof in this case.

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 6th day of March 2017.