

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43036
Docket No. MW-43714
18-3-NRAB-00003-160478**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees 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 Bridge and Building (B&B) Subdepartment employees to perform Track Subdepartment work installing fasteners near A&S Junction on February 24, 25 and March 6, 2015 instead of assigning Track Subdepartment employees (Carrier’s File T041315-01 TRR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants T. Knopf, J. Wilson, M. McCann, L. Mathes, D. Williams and R. Schuck must be allowed twenty-four (24) hours at their applicable rates of pay, Claimant M. Waldron must be allowed sixteen (16) hours at his applicable rate of pay and Claimants K. Muraski and B. Shults must be allowed 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 are Track Subdepartment employees. On the relevant dates, the Carrier assigned Bridge and Building Subdepartment employees rather than Track Subdepartment employees (the Claimants) to replace rail fasteners on the MacArthur Bridge. The work performed on the rail fasteners by the B&B employees was part of the B&B employees' work to replace and realign bridge ties on that bridge.

The Carrier concedes that Track employees have applied rail fasteners in the past. However, the rail fasteners in dispute in this case were on a bridge and, according to the Carrier, the work involving rail fasteners has in the past been associated with bridge maintenance to be performed by B&B employees. See the Carrier's letter dated March 26, 2015 from its Chief Engineer, Bridges and Buildings (the work "... entailed removing fasteners, repositioning existing ties, and reapplying fasteners ...[and t]he work associated to bridge ties on a bridge structure has always been done by the BMW Bridge and Building Department."). The Carrier points out that the real problem was not the rail fasteners, but was eroding and shifting bridge ties which needed to be replaced.

The Organization disputes the Carrier's contentions with the assertion that Track employees have in the past performed this work. See the Organization's letter dated October 27, 2015 (with supporting statements from Track Subdepartment employees).

In these cases, the Organization has the burden to demonstrate that Track Subdepartment employees performed the work on an exclusive basis – i.e., that Track Subdepartment employees historically performed work on rail fasteners on bridges to the exclusion of the B&B employees. Assuming that Track Subdepartment employees have in the past performed the work concerning the fasteners, the record also shows that B&B Subdepartment employees have in the past performed that work as well. Thus, exclusivity for the Track Subdepartment employees to perform the disputed work has not been shown.

Moreover, here the disputed work was performed by the B&B employees as part of their work associated with the eroding and shifting bridge ties. And we note that Article XI (Intra-Craft Work Jurisdiction) provides that “[e]mployees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMWE.” And that is what happened here.

Giving the Claimants the benefit of the doubt, at best, the record is in conflict. A record in conflict is not a record that supports the Organization’s burden to demonstrate a violation of the Agreement or that Track Subdepartment employees have historically performed the disputed work on an exclusive basis. The Organization therefore has not met its burden requiring that the claim 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 2nd day of May 2018.