

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43257
Docket No. MW-42553
18-3-NRAB-00003-140214**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Signal Department employees to perform Maintenance of Way and Structures Department Bridge and Building Sub-department work (build concrete footings) for the new Crest Building at the Hobson Yards, in Lincoln, Nebraska on July 2, 3, 10, 11, 12, 13 and 18, 2012 (System File C-12-J030-2/10-12-0673 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants F. , William Brhel, J. Johnson and James Scherer shall now each be compensated at their respective rates for sixty (60) hours straight time and eleven and one-half hours overtime.**

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 Carrier raised an issue that the Brotherhood of Railroad Signalmen be given an opportunity to be heard on this matter. Given the Board's conclusions, there is no need to address this issue.

The Claimants have established and hold seniority as a Foreman (F. Fankhauser) and carpenters within the B&B Sub-department and were regularly assigned during the times in question.

According to the Organization, on July 2, 3, 10, 11, 12, 13 18, 2012 the Carrier assigned Signal Department employees to build footings and lay foundation for the new Crest Building at the Hobson Yards in Lincoln, Nebraska. According to the Organization, the Claimants were available and fully qualified to perform such work.

The Claimants and the BMWED Local Chairman M. Sailors presented statements. Foreman Fankhauser described the work performed and even that his crew had to tear out the work performed by the Signalmen. He described other similar work performed by members of the Organization in the past; back to 1979 (Attachment 1 to Employees' Exh. A-5). All four claimants signed a statement as follows:

"If the Company had utilized the expertise of the B&B department instead of the signal department the project would not have to had to be redone. This is work that the B&B department have done for may years and the employees listed on this claim have many years of experience (Attachment 3 to Employees' Exh. A-5)."

As can be seen from the statements, the Claimants' experience is limited to the Lincoln Yard.

The Carrier points out that this is an intra-craft dispute, i.e., a claim that the members of the Organization should have done the work assigned to the members

of another organization on the property. It is not a contracting out case. And, unlike in contracting out cases, there is no Note to Rule 55. Rather, Rule 55, the Scope Rule alone applies. Numerous boards have interpreted that Rule to hold that it does not exclusively reserve work to one classification on the property. For example, in Third Division Award 32020 (May 6, 1997), Referee Gerald E. Wallin held:

“With the reservation of work issue thus joined, it was incumbent on the Organization to produce evidence to support its assertion that the disputed work had been customarily, traditionally and historically assigned to Welders and Welder Helpers to the exclusion of all others. The on-property record contains no such evidence. Instead, the Organization relied almost entirely on the text of Agreement Rules 3(a)(8 and 10).

It is well settled, as a general matter, that Classification of Work Rules do not exclusively reserve work to given classifications. The awards of this Board recognizing this principle are too numerous to list.”

Here, as in the Wallin case, the Organization had the burden of proof to establish every element of the claim. On this record, we must find it has not done so. The claim, therefore, is 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 26th day of June 2018.