

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43406
Docket No. MW-44090
19-3-NRAB-00003-170249**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when the 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 B&B Sub- department forces to perform Track Subdepartment work (move dirt and road surface rock) in connection with preparations for a parking lot and driveway at the Carter switch siding on October 14, 20, 21 and 22, 2015 instead of assigning Track Subdepartment members D. Williams and T. Knopf thereto (Carrier’s File T121015-01 TRR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Williams shall be paid twenty-three (23) hours at the applicable machine operator rate of pay and Claimant T. Knopf shall be paid twelve (12) hours at the applicable truck driver rate 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.

On October 14, 20, 21 and 22, 2015, the Carrier used employees of the Bridge and Building (B&B) Sub-Department to perform work in the vicinity of the Carter switch siding. It is undisputed that this work consisted of moving dirt and road surface rock, utilizing a skid steer machine and a dump truck, in preparation for a parking lot and driveway. The Organization claims this work belongs exclusively to employees holding seniority in the Track Sub-Department. In support of its position, the Organization cites Third Division Awards 31360 and 41670 involving these parties. Award 31360 refers to B&B employees clearing away crossties, while Award 41670 concerned B&B employees gauging track and installing ties. In each case, the Board found that the work performed was customarily assigned to Track Department employees. In the instant case, the Organization relies upon Rule 2 of the Agreement, which, in connection with the Track Sub-Department Machine Operators states, "An employee assigned to operate cranes and derricks, Trak-Kleener and bullgraders shall be classified as a Machine Operator."

The Carrier explains that this work involved Carrier-owned equipment to grade an area in preparation for a parking lot. It denies the work was related to the maintenance, repair or construction of track, and argues it has never been the exclusive work of any department. It cites Award 204 of Public Law Board 7163 (BMWE and CSX, Referee Simon), recognizing that "the work of the craft is defined by the duties performed, and not by the tools used to perform that work."

From our review of the record, we cannot find that the work performed had anything to do with maintenance, repair or construction of track or roadbeds. In fact, the work was performed a considerable distance from the right-of-way. There is no evidence that this was the type of work exclusively performed by Track Sub-Department employees. The Awards cited by the Organization are clearly distinguishable for this reason. The fact that the B&B employees might have used the type of equipment normally or regularly used by the Claimants is not a basis for the work accruing to them. As noted in Award 204 of PLB 7163, it is the type of work performed, rather than the tools used, that determines who performs it. Carrier's use of B&B employees in this case was not in violation of the Agreement.

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 January 2019.