

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43422
Docket No. MW-42383
19-3-NRAB-00003-180454**

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

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Bridge and Building Subdepartment employees M. Coan, R. Frenzen, M. Hoppes and B. DeRiso to perform Maintenance of Way and Structures Department work (welding and installing bolsters, brackets and grillage associated with a bridge raise project) at Mile Post 44.77 on the Columbus Subdivision on May 16, June 4 and 5, 2012 and instead assigned Structural Iron Workers from Iowa and the former Chicago & North Western territory (System File D 1216U-201/1574609).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Coan, R. Frenzen, M. Hoppes and B. DeRiso shall now each be compensated for eleven (11) hours and forty-five (45) minutes at their respective straight time 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 instant claim alleges the Carrier violated the Agreement when it failed to assign bridge welding duties to the Claimants, and instead used four employees represented by the Structural Iron Workers to perform the work. The work in question involved the installation of bolsters, brackets, and grillages associated with a bridge raise project at M.P. 44.77 on the dates of April 16, 2012, June 4, 2012, and June 5, 2012. There is no dispute here that bridge welding duties constitute scope covered work. The dispute involves whether the work was actually performed by the Iron Workers.

In summary, the Organization argues a) the Carrier's defense is disingenuous and without merit, b) the statement by Director of Bridge Maintenance T. Bowley only disputes the installation of bolsters or bolster stands by the Iron Workers on one of the three days identified, c) on May 16, 2012, in a conversation between the Assistant Director of Labor Relations and the Director of Bridge Maintenance, the Director of Bridge Maintenance did not deny the presence of the Iron Workers, and also stated the Iron Workers would come back and assist in the work or the work would be contracted out, and d) a witness statement was provided to the Carrier during conference substantiating that the disputed work was performed by the Iron Workers.

In summary, the Carrier argues a) the disputed work was never performed by the Iron Workers, b) although the Iron Workers were present, they were only there delivering material, consisting of four bearing bolsters and bolster stands, and did not engage in any alleged scope covered work, c) at no time did the Director of Bridge Maintenance nor any other Carrier Officer say the Carrier would contract out the work as alleged by the Organization, and d) a statement was provided by Manager of Bridge Maintenance T. Bowley indicating the Iron Workers were there solely for the purpose of delivering four bearing bolsters and bolster stands and no scope covered work was performed by the Iron Workers.

Reviewing the record here, the Board notes that the employee statement provided by the Organization lacks any detail as to the date and type of work performed by the Iron Workers. It only indicates the presence of the Iron Workers at M.P. 44.77. Likewise, the statement from Manager Bowley only addresses one of the three days in question, although it does specifically indicate that the Iron Workers only delivered material and did not perform any scope covered work. Considering this, as well as the rest of the record, the Board is left with an irreconcilable dispute in fact. This Board has held on numerous occasions that where there is a genuine dispute of facts, it falls to the moving party to provide sufficient evidence to convince the Board of its version of events. Here, the evidence failed to meet that burden. As such, the Board has no choice but to dismiss the claim.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD

Claim dismissed.

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 1st day of March 2019.