

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 3-43573
Docket No. MW-42300
19-3-NRAB-00003-180460
NRAB-00003-130298**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman 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 employee R. Schoon to inspect bridges behind the operation of the rail grinder between Mile Posts 6.9 and 155 on the Clinton Subdivision on February 15, 19, 20, 21, March 18, 19, 20, 21 and 22, 2012 and instead assigned Supervisor K. Wilson (System File G-1201C-53/1569846 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Schoon shall now be compensated at his respective and applicable rates of pay for an equal share for all straight time and overtime hours expended by Supervisor K. Wilson in performance of the aforesaid work on February 15, 19, 20, 20, 21, March 18, 19, 20, 21 and 22, 2012.”**

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 case concerns the Carrier's ability to assign fire watch duties. In February and March 2012, the Carrier utilized a grinding train to repair rail on its Clinton Subdivision. As a safety precaution, the Carrier requires that an employee inspect bridges after the grinding train passes to make sure that sparks from the grinding train do not start a fire.

The Carrier does not dispute that on the dates in question it assigned ARASA K. Wilson, the territory's supervisor, to maintain fire watch between Milepost 6.9 and Milepost 155 on the Clinton Subdivision. The Organization contends that by this action the Carrier violated the seniority rights of Claimant, who was assigned to the Bridge and Building (B & B) Subdepartment. The Organization states that the Carrier thereby violated numerous Agreement provisions, including Rule 1—Scope.

The Carrier maintains that ARASA Wilson was providing supervision and track protection, that these duties were not subject to B & B Subdepartment classifications, and that the work was not Scope-covered. Therefore, it asserts, the Organization has failed to meet its burden of proof.

We agree. The Board finds, based upon the complete record, that ARASA Wilson did, in fact, follow the rail grinding train to supervise and provide a fire watch. This situation has previously been addressed in Third Division Award No. 42538, where it was held that the precise work at issue is not exclusively reserved to the Organization. The same result must obtain here. The Organization has failed to meet its burden of proof.

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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 27th day of March 2019.