

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44039
Docket No. MW-44092
20-3-NRAB-00003-170170**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on May 12 and 13, 2015, the Carrier assigned Bridge and Building (B&B) Department Gang 6PP3 to install ties in the Lewisport House track at Mile Post OHR 96.2 on the Louisville Division and failed to assign such work to Track Department employees A. Foushee, R. Matthews, C. Robinson, B. Jolly, J. Brown and M. Bartlett (System File I55703415/2015-188152 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants A. Foushee, R. Matthews, C. Robinson, B. Jolly, J. Brown and M. Bartlett shall each be compensated sixteen (16) hours straight time and four (4) hours overtime at their respective 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 hold seniority in the Carrier's Track Department. During May of 2015, the Claimants were assigned to headquartered and non-mobile Track Department positions and working in and around Lewisport, Kentucky. As part of their assignments, the Claimants ordinarily and customarily performed track work such as the installation of track ties.

On May 12 and 13, 2015, the Carrier assigned the B&B Department Gang 6PP3 to install ties in the Lewisport House track, in connection with an existing bridge project. The Organization filed this claim asserting that the assignment of forces from the B&B Department to perform track work constituted a violation of the Agreement, which was declined by the Carrier. The parties were unable to resolve the claim on-property and it is properly before this Board for final adjudication.

The Organization contends that the tie installation work in dispute belongs to the Track Department and the Carrier violated the Agreement when it assigned this work to the B&B Department. The Organization contends that Rules 1 and 4 of the Agreement establish separate and distinct boundary lines for various classifications within the Maintenance of Way Department. Rule 1 states, in part:

“RULE 1 - SENIORITY CLASSES

The seniority classes and primary duties of each class are:

B & B Department

A. Inspector Roster:

Inspector - Includes Scale, Bridge and Building Inspectors

Inspect scales, bridges, buildings and other structures.

B. Bridge and Building Roster:

1. B & B Foreman - In charge of Plumbers and B & B Mechanics

Direct employees assigned under his jurisdiction.

2. B & B Assistant Foreman

Direct and work with employees assigned to him under the supervision of a Foreman.

3. B & B Mechanic-Carpenters, Painters, Masons

Construct, repair and maintain bridges, buildings and other structures.

C. Plumber Roster:

1. Plumber

Construct, repair and maintain plumbing, piping facilities, including water service, refrigeration and cooling.

D. Machine Operator Roster:

*Machine Operator-Mechanics, Machine Operators
Operate the following machines: Backhoe, Bridge Tie Crane,
Locomotive Crane, Truck Crane, Pile Driver.*

* * *

Track Department

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B. Track Roster:

1. Track Foreman

Direct employees assigned under his jurisdiction.

2. Assistant Track Foreman

Direct and work with employees assigned to him under the supervision of a foreman.

3. Trackman

Construct, maintain, repair, inspect and dismantle track and appurtenances thereto.”

The Organization contends that the Agreement does not permit the Carrier to assign employees from one classification to perform the work of another. The Organization contends that pursuant to Rules 11 and 17, Claimants would have earned the requested remedy had the Carrier not violated the Agreement.

The Carrier contends the Organization failed to show the Carrier violated any rules of the Agreement and failed to fulfill its burden of proof. The Carrier contends that there is no language in the Agreement that restricts it from using any employee to perform any work if it falls within the scope of their craft.

The Carrier contends that on-property precedent shows that “primary duties” has not been interpreted to grant exclusive duties to individual classifications. The Carrier further contends that the claimed work performed by B&B employees was in relation to an existing bridge project that they were involved in. Finally, the Carrier contends that the claimed remedy is excessive, as the gang in question was not paid at the overtime rate.

After carefully considering the record and the precedent cited by the parties, this Board concludes that the Organization has failed to demonstrate that the work in dispute was exclusively performed by Track Department employees. Rule 1 refers to “primary duties” of classifications, but precedent on this property makes clear that the Carrier has some latitude to assign duties from one classification to perform work of another classification. Third Division Award 37319; Public Law Board 7104, Award No. 4.

“The Scope Rule...does not designate the work as being within the exclusive domain of any sub-department or single class of employees. While Rule 1 describes the work done by various classes of employees, it does not limit such work to only one class.”

Public Law Board 7163, Award No. 204. Here, the Carrier asserted that the work done by the B&B employees was in relation to their involvement in an existing bridge project. The Organization cites to SBA 1110, Award No. 151, which found the Carrier’s assignment of primary duties to another classification improper. However, this Award expressly distinguished incidental work. See, also, Third Division Award 37248. Therefore, this Board will follow the long line of precedent finding that Rule 1 does not designate the work as being within the exclusive domain of any sub-department or single class of employees.

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 June 2020.