

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44196  
Docket No. SG-45449  
20-3-NRAB-00003-190219**

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

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of E.E. Espinoza, Jr., for 42 hours at his respective overtime rate of pay, and R. Walker, for 50 hours at his respective overtime rate of pay; account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 12, and 65, when on September 26–30, 2017, Carrier assigned Signal employees, Mr. Bear and Mr. Frisch, to perform normal maintenance work of replacing skate retarder parts in Davidson Yard, resulting in a loss of work opportunity for the Claimants. Carrier File No. 1696557. General Chairman’s No. S-1, 12, 65-1686. Carrier File No. BRS File Case No. 15987-UP. NMB Code No. 172.”**

**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.**

In the instant claim, the Organization argues the Carrier violated the Agreement when it worked two Signal employees from Signal Gang #4606 to work in the Davidson Hump Yard, and thereby deprived the Claimants, who were assigned and headquartered in the Davidson Hump Yard, of a work opportunity that resulted in a loss of earnings.

The Organization argues a) the disputed work is reserved to employees working in the Davidson Hump Yard, b) only in emergency situations does the Carrier have the authority to work employees who are not part of the maintenance group in the Davidson Hump Yard, and c) no emergency existed in the instant case.

The Carrier argues a) the Organization's claim facts are not accurate, in that Employee Frisch was never assigned to Gang 4604 and never worked on the Davidson Yard project during the dates in question, b) Claimant Espinoza never lost a work opportunity in that he assisted on the very project that he is making a claim against, c) the work was not routine maintenance and instead involved a large scale replacement project of skate retarders, d) there is a historical practice on property to use system signal forces for projects of this magnitude and the project itself did not replace the normal maintenance duties performed by Davidson Yard employees, e) the Classification Rule does not create a preservation of work granting the Claimants exclusive rights to the disputed work, f) the Organization's remedy demand is excessive, and g) the Organization failed to satisfy its burden of proof.

After a thorough review of the record, the Board initially finds the Organization's claim to contain errors of fact. The Organization alleges Employee Frisch worked on the disputed project as part of Signal Gang No. 4604, yet the work history report for Employee Frisch indicates he only worked one day during the disputed four-day period and was assigned to Gang No. 5843 rather than Gang No. 4604. As such, the Board concludes that Employee Frisch was not assigned to Gang No. 4604 as alleged by the Organization and therefore never worked on the Davidson Yard project on the dates in question.

The Organization argued that the work in dispute here was nothing more than normal maintenance repair work. The Board respectfully disagrees. Although the Claimant's perform this type of work, the record here indicates that the work in question was a large-scale improvement/replacement project that was significant in scope and went beyond normal/routine testing and scheduled maintenance requirements.

Given all the above, the claim is hereby denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

**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 30th day of September 2020.