

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44588
Docket No. MW-44672
22-3-NRAB-00003-200839**

The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.

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

**PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Welders A. McGee and B. Barnett to perform track work installing switch ties near Mile Post 473.200 on the South Siding Switch Soco on January 25, 2016 instead of assigning Section Gang employes J. Walters and K. Coleman thereto (System File 2600-SL10-1621/14-16-0232 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Walters and K. Coleman shall each be compensated eight (8) hours at their applicable 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.

On Monday, January 25, 2016, Roadmaster Steele directed Special Equipment Operator (“SEO”) Daniel Dail to repair a frog by replacing the switch ties using his backhoe, thereby stabilizing the entire switch. A frog is a switch component used at the intersection of two running rails providing support for wheels and passageways for their flanges, thus permitting wheels on either rail to cross the other. A frog can become unstable if it is not supported by sound ties, and an unstable frog can cause a train to derail. Roadmaster Steele also instructed the local Section to assist SEO Dail with this task, but their truck broke down in route. Because these repairs needed to be made as quickly as possible to avoid delays and prevent possible derailments, Dail directed several welders that were working nearby to assist him by gauging the rail after installation of the ties to ensure proper alignment and to install bolts and lag screws.

In February 2016, the Organization filed a claim alleging that BNSF violated the Agreement when it instructed the two welders to install switch ties on January 25, 2016. The Organization asserted that installation of switch ties is work reserved to employees assigned to headquartered Section gangs and that the Welders can only weld.

After a review of the entire record the Board has determined that the claim must be denied. This claim is by definition an intra-craft dispute and this Board has previously held that the burden the Organization faces is a heavy one. Specifically, it must prove the disputed work has been exclusively performed on a system-wide basis by the class of employees it asserts the work is reserved to, in this case employees assigned to headquartered Section gangs.

Here, the Organization failed to provide substantial evidence establishing that assisting a Machine Operator with installation of ties under a frog (by checking the gauge of the track as well as installing bolts and lag screws) is work that has been performed solely and exclusively by employees assigned to headquartered Section gangs.

Accordingly, for all these reasons the claim is denied.

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 29th day of October 2021.