

Award No. 862
Docket No. 810
2-D&RGW-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier did and is violating the controlling agreement and Rules 14 (b), 29 (c), 99 (a) thereof by:

- (a) Assigning other than carmen welders on February 3 and 4, 1942, to performing carmen's work on tender of locomotive No. 1403.
 - (b) Declining to compensate Carman Welder A. Overy, the difference of 9¢ per hour between the rate received and the rate paid for the work performed.
 - (c) Refusing to cease and desist from the assignment of other than carmen welders to perform carmen's work in the roundhouse with carmen welders on duty and available.
2. That in consideration of the aforesaid violation, the carrier be ordered to:
- (a) Pay Carman Welder A. Overy 9¢ per hour additional for each 8 hours on February 3 and 4, 1942.
 - (b) Cease and desist from assigning other than carmen welders to carmen's work in the roundhouse, when carmen welders are on duty or are available.

EMPLOYEES' STATEMENT OF FACTS: At Salt Lake City, Utah, the carrier maintains carmen welders and welders in some of the other shop crafts.

In the roundhouse on February 3 and 4, 1942, these other welders were arbitrarily assigned to weld bolsters and spring planks of Engine No. 1403.

This work was performed by Machinist Welder Ivers on the first shift and Blacksmith Welder Jenson on the first shift.

The claimant and Carmen Welders Nuzman, Edmon and Faulkner were on duty February 3 and 4 and at the time were regularly employed on the first shift in the car department.

vision of the locomotive and car departments; car inspectors, joint car inspectors, safety appliance and train car repairers, wrecking derrick engineers and wheel record keepers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work and all other work generally recognized as carmen's work.

to require the assignment—under the provisions—of Rule 29 (a) of a carman welder, in either the back shop or the enginehouse at Salt Lake City.

We have carmen welders—and the complainant in this case, A. Overy, is one—assigned on the repair track at Salt Lake City. However, our repair track at that point is located in Roper yard which is the make up and break up yard for trains arriving and departing Salt Lake City. Roper yard is located approximately 2.6 miles from our back shop.

Due to using one of our assigned back shop welders, instead of Carman Welder Overy, to weld the bolsters and spring planks on Engine 1403, the instant claim was presented as a violation of Rules 14 (b), 29 (c) and 99 (a) of the current agreement.

Rule 14 (b) reads:

When an employe is used on work paying a higher rate of pay for four hours or less, in any one day, he shall be paid the higher rate on the minute basis, with a minimum of one hour; for more than four hours in any one day, the higher rate will apply for that day.

Rule 29 (c) reads:

An assigned welder will be used to perform work in another craft, or in the roundhouse only when unassigned welders are not on duty and available.

Rule 99 (a) reads:

(a) Oxyacetylene and Electric Welders will be paid a differential of five cents (5¢) per hour above the minimum rate in the department used and will be compensated under the provisions of Rule 14 (b).

POSITION OF CARRIER: The carrier contends that Rules 14 (b) and 99 (a) have no particular bearing on this claim. Had Carman Welder Overy performed this work he would have been paid under the provisions of Rule 14 (b). With respect to Rule 99 (a), we pay our welders a differential of five cents per hour above the minimum rate in the department used.

With respect to Rule 29 (c) the carrier contends it did not violate this rule. On the contrary this rule supports the action of the carrier in requiring one of the assigned welders in the back shop to perform the welding work on the tender of Engine 1403. Mr. Overy was not on duty in our back shop or our enginehouse at Salt Lake City, neither can it be said that he was available for this particular work when he was regularly assigned to a job approximately three miles distant.

The carrier contends in this case it violated no rule or settlement and further contends that the effort made by the organization in this case to have your Board place an interpretation on Rule 29 (c) to the effect that an employe approximately three miles away is available is not justified, and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

Rule 29 (a) provides:

"When there is sufficient work at any point in a craft, or the roundhouse, oxyacetylene, thermit and electric welders will be assigned to perform the work in that craft, * * *"

There were carmen welders assigned at that point.

Rule 29 (c) provides:

"An assigned welder will be used to perform work in another craft, or in the roundhouse only when unassigned welders are not on duty and available."

The record is indefinite as to Welder Overy's assignment and as to his availability to perform the work in question. Under these circumstances additional compensation to Welder Overy cannot be sustained.

AWARD

Claim for violation of the agreement by having other than carmen welders perform the work in this case is sustained.

Claim for additional compensation to Overy is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of November, 1942.