

Award No. 1529

Docket No. 1387

2-MP-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That carrier is violating the controlling agreement at North Little Rock Shops, particularly Rules 29 and 136 (a) by refusing to pay the welders' rate of pay to Carman Welder R. A. Parkhill when assigned to operating spot welding machine.

(b) In consideration of the foregoing, Carman Welder R. A. Parkhill is entitled to be additionally compensated in the amount of 5c per hour from March 21, 1949 to August 31, 1949, both dates inclusive, and 6c per hour from September 1, 1949, to date, for all time engaged in operating spot welding machine.

EMPLOYEES' STATEMENT OF FACTS: At North Little Rock, carrier maintains a universal or multirange spot welder in coach shop. This machine is presently operated by Carman R. A. Parkhill, hereinafter referred to as the claimant, and is capable of welding all types and gauges of metal from 28½ to ½ inch, inclusive. When machine was first installed, a factory representative was on hand to teach claimant how to operate machine, which was a slow process at first because in addition to learning the actual operation, he had to acquire a thorough knowledge of the various metals and their reaction to the spot welding process in order to set the electronic controls for maximum welding efficiency.

The main control panel consists of a group of nine different controls, namely cycles of squeeze time, cycles of weld time, cycles of hold time, cycles of weld time range, cycles of time in repeat and in conjunction with these panel settings the second amperage control panel must be also set for proper air adjustment—electrodes and air gap must be maintained.

POSITION OF EMPLOYEES: The employees' statement of facts clearly show that in order to maintain maximum welding efficiency, the operator of this universal spot welder must possess a complete and thorough knowledge of the various metals that are used in the building of coaches today and there are many metals used, such as aluminum, bronze, brass, copper and stainless steels,

According to the Resistance Welder Manufacturers' Association, and we quote from Page 51 of the Revised Edition of Resistance Welding Manual published by that association in July 1946,

"Spot welding, in its simplest application, consists merely of clamping two or more pieces of sheet metal between two copper or copper alloy welding tips and passing an electric current of sufficient strength through the pieces to cause welding or bending of the pieces."

Now what has been the practice on this carrier in regard to the operation of spot welding machines? What rate has been paid through the years? Has the 6c differential (5c prior to September 1, 1949) ever been paid to journeymen operating spot welding machines?

We will now answer these questions in the order of their appearance:

1. The first spot welding machine at the carrier's shops in North Little Rock was installed in the locomotive department pipe shop during 1934. It has been operated by journeymen mechanics since that time.

2. The journeyman mechanic rate of pay applicable to the craft to which such mechanic belongs, whether machinist, boilermaker or otherwise, has always been paid to such mechanics operating the spot welding machine.

3. The differential of 6c (5c prior to September 1, 1949) has not, and is not now, being paid to journeymen mechanics operating spot welding machines on this property.

It is obvious, therefore, that Rule 136 (a) has never been considered by the carrier or the employees as applicable to spot welding machines. It has always been understood that the skill required to perform autogenous welding, the hazards involved in such welding, i.e., eye strain, the inhalation of fumes from the gases used and damage to the welder's clothing caused by fire ignited by sparks and small pieces of molten metal thrown off by the welding process present in welding with the various gases employed in autogenous welding were the underlying factors which support the differential of 6c per hour provided for in Rule 136 (a).

FINDINGS: The Second 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.

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

The facts are not in dispute and can be gleaned from the record. However, for purposes of these findings we deem it necessary to make the following statement.

For many years, in fact since 1922, carman employees on this railroad and the carrier have been operating under agreements which, although they have been revised from time to time by the execution of new contracts, have always included a rule containing language similar, if not identical, to that to be found in Rule 136 (a) of the current agreement, providing differentials for carmen, which reads:

"(a) Autogenous welders shall receive six (6c) per hour above the minimum rate paid carmen at point employed, in accordance with Rule 29."

The first spot welding machine at the carrier's shop in North Little Rock, Arkansas was installed in the locomotive department pipe shop during 1934. Since that time it has been operated by journeymen mechanics at the rate of pay applicable to the craft to which the mechanics called upon to operate it belonged. During October, 1948, another spot welding machine was installed in the coach shops at North Little Rock for the purpose of performing necessary welding in connection with the fabrication and assembly of metal parts used in the construction and repair of passenger coaches. Claimant R. A. Parkhill, a carman, was assigned to such machine and has been operating it since that time.

The carrier states without refutation, and therefore we assume the facts to be, that the differential rate of pay provided for by Rule 136 (a) has never been paid to operators of spot welding machines on its railroad and that no claim was ever made for such a rate for operating the machine at the coach shop until the instant claim was filed. This, although the record does not disclose the exact date, appears to have been during the last half of 1949.

Under the confronting facts, the sole issue presented for decision is whether the claimant, as the operator of the involved spot welding machine, is an autogenous welder within the meaning of that term as used in the rule heretofore quoted. With respect to this issue claimant contends the agreement must be construed as comprehending that spot welding is autogenous welding while the carrier insists it is not susceptible of that construction.

There can be little doubt that spot welding is a branch of the art of electric welding. Indeed the highest court of this land has so held. Nor do we need go further to ascertain the nature of the process. See *Thompson Spot Welder Co. v. Ford Motor Co.*, 265 U. S. 445, 68 L. Ed. 1098, where the following statement appears:

"The patent in suit relates to that branch of electric welding known as spot welding, by which two sheets or plates are welded together, face to face, in spots, as a substitute for riveting; this being accomplished by placing the two sheets between two pointed electrodes, applied to their exterior surfaces, opposite to one another, which heat the sheets to the welding temperature, and exert the required pressure in the line between the points of the electrodes, resulting in welding together the inside faces of the sheets in the spot on that line." (p 448)

In support of its position claimant argued that all electric welding is encompassed by the autogenous process, therefore spot welding is autogenous welding and claimant is an autogenous welder. The trouble with this argument is that the fundamental principle on which claimant bases his position on this point is at least highly debatable if not actually fallacious. We are not disposed to labor the intricacies of a highly technical subject. It suffices to say that after consideration of the definition of the term autogenous to be found in Webster's International Dictionary, (1949) Second Edition unabridged, and extended research, examination and consideration of recognized authorities dealing with divers subjects which are entitled to and must be given consideration in reaching a decision on the decisive issue here involved (see e. g., Machinery's Handbook (4th Ed.), Autogenous Welding, 1194, Electric Welding, 1204, 1205; Machinery's Handbook (14th Ed.), Autogenous or Gas Welding, 1603, Electric Welding, subtitles Resistance Welding, 1611, Spot Welding, 1612, and Arc Welding, 1613; Pender-Del Mar, Electrical Engineers' Handbook (3rd Ed.) on Electric Power, Electric Welding, 18-34, General Considerations and Definitions § 33; Resistance Welding 18-35, § 34 and 18-36; Arc Welding 18-42, § 35; Pender-Del Mar, Electrical Engineers' Handbook (4th Ed.) on Electric Power, Electric Resistance Welding 18-81, § 43, subtitles Spot Welding 18-82, 18-83, Spot Welding Electrodes, 18-85; Audels Handy Book of Practical Electricity, Resistance Welding, 5,062 to 5,066, incl.; 19 Collier's Encyclopedia, Electric Welding, and particularly subtitles Nonpressure Welding and Pressure Welding, in which Spot Welding is discussed, 413 to 415, incl.), we are

unwilling to say the term "autogenous welders" has such a common, fixed and well defined meaning as to require or permit a conclusion that operators of spot welding machines are autogenous welders within the meaning of that term as used in the current agreement. Neither are we willing to say that under its terms such agreement can be construed as stating in clear, definite and express language that spot welding is to be regarded as autogenous welding or that operators of spot welding machines are to be classified as autogenous welders. Nor are we able to discern anything in its terms disclosing the intent of the parties. The most that can be said is that they contemplate autogenous welders, who perform autogenous welding, are to receive the differential rate. In these circumstances all we can do is to resort to established practice and the interpretation placed upon the agreement by the parties for a long period of time for the purpose of ascertaining their intent and understanding as to what is meant by the term "autogenous welders" as used in the differential rate rule of the agreement. When that is done we find no sound basis for holding that throughout the years the parties ever reached a mutual understanding or agreement to the effect spot welding operators came within the scope of that term. Of a certainty the admitted past practice precludes any such conclusion. It follows the record discloses ample grounds for negotiation respecting the import to be given the rule but fails to establish a violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1952