

**Award No. 6080**

**Docket No. 5887**

**2-N&W-SM-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier violated the current agreement by the assignment of Carman welder to perform locomotive department welding on Steam Derrick Car No. 563186.

2. That accordingly the Carrier be ordered to additionally compensate Locomotive Department Welder J. Maughn, twelve (12) hours for March 23, 1968, and eight (8) hours for March 24, 1968, and C. W. Gross (furloughed extra welder) four (4) hours for March 22, 1968, and four (4) hours for March 29, 1968, at the welders pro rata rate of pay for work performed by Carman welder W. H. Wade.

**EMPLOYEES' STATEMENT OF FACT:** At Shaffers Crossing Shop, Roanoke, Virginia, the carrier maintains a shop and yards area where there are employed locomotive department and car department welders, who perform their work in the respective departments as per the agreement.

On March 23, 1968, and the above mentioned subsequent dates car department welder W. H. Wade was arbitrarily assigned to weld a water tank on steam derrick car no. 563186. This work was performed within 200 yards of the roundhouse wherein the claimants were employed and on duty and could have performed the work.

**POSITION OF EMPLOYEES:** It is submitted that the provisions of rule No. 33 were violated and that the work herein question is clearly bound by the following agreed-to-specific provisions thereof, reading in pertinent part:

Rule No. 33 Provides, "welding work performed on locomotives, tenders, their appurtenances and shop and other machinery shall be confined to the mechanics of the locomotive department,\* \* \* a separate seniority list will be maintained for welders in the locomotive

and 5, 6, 8, 36, 37, 44, 53, 61, 97, 104 and 105. See also many Second Division Awards.

6. If the claim were sustained, the claimants have no rights to the work and/or compensation claimed.

**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.

Parties to said dispute waived right of appearance at hearing thereon.

On the dates mentioned in the Claim, Carman Welder Wade was assigned to fabricate a water tank on steam derrick Car No. 563186. The work basically consisted of the following: (1) lay and cut out of the sides, end etc., (2) fitting up and grinding of the component parts, (3) welding of the parts together which is the work in dispute. All phases of this work were performed in the car department, by car department personnel and under the supervision and direction of car department supervisors.

It is the position of the Sheet Metal Workers Union that the work involved rightfully belonged to their Craft and that by assigning the work to the Carmen, Carrier violated Rule 33 of the Agreement, which in pertinent part reads:

"Rule 33 — \* \* \* Welding work performed on locomotives, tenders, their appurtenances and shop and other machinery shall be confined to the mechanics of the locomotive department. \* \* \* A separate seniority list will be maintained for welders in the locomotive department and a separate seniority list will be maintained for welders in the car department."

Carrier on the other hand disputes this contention of the Union and stated categorically that steam derrick cars are not mentioned in Rule 33; that since the disputed work was on a steam derrick car the work would be given to the Carmen's craft under the following portion of Rule 33:

"In the future at points employing one or more regularly assigned welders in the car department, welding work on cars, or their appurtenances, shall be confined to the mechanics of the Carmen's craft."

An examination of the record before us reveals that the fabrication and welding on such tanks and similar work has been done in the car department by Carmen and Carmen Welders for many years. Moreover, Maintenance of Way employes weld on shop and other machinery in the daily performance of their duties. In order for the Sheet Metal Workers to succeed in this claim, they must show by a preponderance of evidence that the work at issue is work belonging to them exclusively. The burden of proof in this respect rests

squarely with the Petitioners. From a review of the record, we find that Petitioners have not met this burden of proof and we will accordingly deny the claim.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen**  
**Executive Secretary**

Dated at Chicago, Illinois, this 15th day of December 1970.