



Award No. 6189
Docket No. 6038
2-N&W-SM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Locomotive Department Welder W. H. Neff, Jr., was unjustly deprived of his service rights to perform overtime when other than regular assigned welders were improperly assigned to perform welding on a six (6) inch steam line, Blacksmith Shop, Roanoke, Virginia, on December 21, 1968.

2. That accordingly the Carrier be ordered to additionally compensate regularly assigned welder W. H. Neff, Jr., in the amount of ten (10) hours, at the welder time and one-half rate as though he had performed the aforesaid work.

EMPLOYEES' STATEMENT OF FACTS: At Roanoke Shop, Roanoke, Virginia, the carrier maintains a shop where there are employed locomotive department welders. These welders are carried on a separate seniority roster as provided for by Rule 30 and 33, who perform their work in this department as per the agreement.

On December 21, 1968, pipefitters who are not regular assigned as welders were arbitrarily assigned to weld a six (6) inch steam line and outlets, which had been placed in hangers down through the shop several days before the date the work was performed. Also, it was known on the day prior to this assignment that additional welders were needed, and claimant could have been assigned to perform this work.

This dispute has been handled with the carrier up to and including the highest designated officer, all of whom have declined to make satisfactory settlement.

The Agreement effective September 1, 1949, as subsequently amended is controlling.

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.

Claimant alleges Carrier violated Rule 11 of the Agreement when it permitted others than regularly assigned welders to perform welding work on a six (6) inch steam line on December 21, 1968 at Carrier's Roanoke Shops.

Rule 11 of the Agreement recites as follows:

"RULE 11.

DISTRIBUTION OF OVERTIME

When it becomes necessary for employes to work overtime they shall not be laid off during regular working hours to equalize the time.

Record will be kept of overtime worked and qualified men called with the purpose in view of distributing the overtime as equally as possible."

Further, the Organization contends that the work in question belongs to welders under Rule 33 of the Agreement.

Carrier's defense to the claim is that it was on the date in question in the process of cutting over a new steam line through the Blacksmith Shop with five pipefitters on overtime, two pipefitters on straight time, one welder on overtime and one welder on straight time; that in order to accomplish the cut over it was necessary to shut off all steam and heat facilities in most of Roanoke Shops; and since the temperature was near freezing, it was an emergency which required the line to be restored as soon as possible; that the work could be speeded up with more welders, and therefore three of the pipefitters, who were qualified welders, were used to make some of the pipe welds; that Rule 33 is applicable herein.

Rule 33, the applicable part thereof, provides:

" * * * * *

At points or shops where there is not sufficient welding to warrant the assignment of regular men and/or where regularly assigned welders are employed, and it is necessary to augment the force temporarily, welding may be done by competent men from any of the crafts. * * *."

Carrier also points out that the claim was declined because welders from other crafts were making claim for the same time causing this claim to be a

dual claim. Carrier further argues that no employees were laid off during the regular working hours to equalize the time for this work and thus Rule 11 was not violated; that since the claim is for a new rule, this Board does not have the authority to write such a rule; that payment of overtime rate is not justified.

The Board finds that Rule 33, the applicable part cited above, authorizes Carrier in this instance to do what it did, namely, permit employees other than welders to do the work in dispute on the date in question. Thus, the Organization's claim is without merit and must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.

LABOR MEMBERS' DISSENT TO AWARD NO. 6189, DOCKET NO. 6038

The majority in Award 6189 completely ignored the provisions of Rule 33 of the current agreement. They argued that in this particular situation, the carrier had the right to augment the welding pool which, of course, is incorrect in this situation, as there were pool welders available for call on December 21, 1968. The Rule gives the carrier the right to augment the welding pool, but this can be only when the welding pool is exhausted of available welders. If this were not so, then there would be no need for a welding pool.

I call to your attention that this is a general rule affecting all of the crafts in the Locomotive Department, and the second to the last paragraph on page 2 of Award 6189 states:

"* * * this Board does not have the authority to write such a rule; * * *" (Referring to Rule 11.)

In their denial of this award, the majority certainly affected the application of Rule 33 in their denial, as this denial gives the carrier the right to augment the rule at will to eliminate overtime. This is in direct violation of Rule 33.

The majority in its denial argue that an emergency existed and this gave them the right to assign pipefitters to perform welding that rightfully belonged to pool welders, since they were available. It just so happens that the carrier had been working on this project the week prior to December 21, 1968 and could have notified the pool welders the day before to report for work, which of course would have eliminated the majority's position of a loss of time condition.

The majority argues that an emergency existed. This of course is disputed, since the carrier had been working on the project the week before December 21, 1968. This is strictly a situation of the Carrier's supervision not properly evaluating the nature of the work and calling in the proper amount of pool welders to perform the work in question.

For the above stated reasons, paragraphs 1 and 2 of the Claim of the Employees should have been sustained.

E. J. Haesaert
Labor Member

D. S. Anderson
Labor Member

E. J. McDermott
Labor Member

R. E. Stenzinger
Labor Member

O. L. Wertz
Labor Member