

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13413
Docket No. 13225-T
99-2-96-2-137

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc., (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rule 154 (a) and (b) when the carrier assigned a boilermaker to perform work exclusively reserved to the carman craft.
2. Accordingly, the Carrier be instructed to pay carman D.P. Reyburn, ID #623200, (hereinafter referred to as ‘claimant’) four hours at the applicable carman straight time rate for said violation.”

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.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim protests the Carrier's October 2, 1995 assignment of a Boilermaker to weld the coupler pocket to the face plate on Locomotive 6006 at the Huntington Locomotive Shop. The record reflects that the assignment was for a period of between two and four hours and that an electric arc welder was used to perform the job.

The Organization argues that such work is reserved to its craft under the language of Rule 154 (a) that defines Carmans' work to include "... oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work ...", and (b) which states "... that present practice in the performance of work between the carmen and the boilermakers will continue." The Organization asserts that Carmen have historically performed the task of welding and repairing all couplers and draft gear lugs and other repairs associated with the draft system on locomotives at the Huntington Locomotive Shop. It contends that the Carrier may not rely upon the Incidental Work Rule in this case because the task of replacing the face plate was completed two days prior to the time when the welding assignment was made, and cannot be considered an incidental part of such assignment or work performed to complete that assignment. The Organization notes that the welding was a separate job assignment, not incidental to the application of the face plate. The Organization further contends that the Incidental Work Rule does not require it to request a time study before progressing a claim of this sort.

The Carrier initially asserts that the Board has no jurisdiction to entertain this claim because the Organization failed to request a time study as required by Section 1 of the Incidental Work Rule. It further contends that this job assignment was permissible under the Incidental Work Rule because it involved a task that was incidental to the main task of replacing the face plate, which took 16 hours for Carmen to perform and is a simple task.

Consideration of the language of Section 1 of the Incidental Work Rule is determinative of this case. It reads as follows:

“Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of ‘incidental work’ (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as ‘incidental’ when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a ‘preponderant part of the assignment.’

If there is a dispute as to whether or not work comprises a ‘preponderant part’ of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.”

A review of the record herein reveals that the simple task provision is inapplicable because the welding work in issue admittedly took more than two hours to perform. Further, the Incidental Work Rule is normally used when there is a dispute as to which craft is to perform the assignment. In this case, the Carrier admitted that Carmen were assigned, and did perform, the main task of replacing the face plate some two days prior to the welding assignment, and did not have time to complete the welding on that occasion. The assignment of a Boilermaker to perform the welding two days later

cannot be said to be incidental to the main work assignment, and, even if it were, the Incidental Work Rule would permit the welding work to be performed by the craft doing the "preponderant part" of the assignment, which was admittedly the Carmen herein.

Additionally, because there is no argument between the parties about the preponderant part of the work and who was to perform it, the Board can see no relevance to a time study request in this case. The Organization never claimed that the welding aspect of this assignment took a greater time than replacing the face plate, only that they were separate assignments due to the lapse of time between them. The Carrier did not explain how this part of the Incidental Work Rule applies to the facts in this case or serves as a basis for dismissing the claim. Because the failure of the Organization to request a time study was raised by the Carrier as an affirmative defense to the claim, it bears the burden of proof with respect to it. We find that it failed to meet that burden in this case.

Accordingly, we sustain the claim and direct that the Claimant be compensated four hours for the lost work opportunity on October 2, 1995 at his pro rata rate of pay.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 16th day of June 1999.