

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11480
Docket No. 11396
88-2-87-2-77

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carman Welder K. Maher was deprived of his contractual rights when the Chicago and North Western Transportation Company violated the controlling agreement on March 3, 1986, when they permitted Carman R. Nowak, an unqualified welder, to perform welding work on boxcar ICG 562330.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman Welder K. Maher in the amount of eight (8) hours pay at the time and one-half rate of pay."

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 employes 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.

This case involves a claim for payment of eight (8) hours at the time and one-half rate from Carman/Welder K. Maher who was the regular incumbent of a carman/welder position at Proviso, IL when, on March 3, 1986, Carrier used Carman R. Nowak to perform "---welding work on two wear plates [on boxcar ICG 562330] on the truck side on the first shift spot rip."

The Organization contends that because Carman Nowak is not a "certified welder" he should not have been used to perform the welding work in question but rather that Claimant Maher should have been called on an overtime basis to perform the welding work. The Organization alleges that the use of Carman Nowak violated Rules 7, 9, 56, 58 and 71 of the Collective Bargaining Agreement, as well as Carrier's stated policy to the effect that none but qualified, certified welders would be assigned to carman/welder positions.

Carrier agrees that the regular assigned incumbent of a bulletined carman/welder position must be a certified welder, i.e., he or she must have successfully completed the training and testing established by the Carrier on all types of welding included in the training and testing schedules. Carrier argues, however, that not only is there a history of Carmen who are not fully "certified" doing incidental welding in connection with and directly related to the performance of their regular carman's work, but also that there is no Rule prohibition against Carrier's use of such on-duty Carmen to perform incidental welding work which they are qualified to perform.

We have examined the record of this case; we have heard and considered all of the presentations of the parties and have concluded that the Carrier's position must prevail.

Rule No. 7 of the Agreement provides for a basis of payment at the penalty (1 and 1/2 time) rate in clearly defined circumstances, none of which exist here.

Rule No. 9 provides for the distribution of overtime work. Such a distribution is not involved in this case.

Rule No. 56 provides that Carmen will perform welding work generally recognized as belonging to the Carman craft. Here none but Carmen were utilized to perform the welding work in question.

Rule No. 58 is a Classification of Work Rule for Carmen. Again, this Rule was not violated in the instant case because none but Carmen performed carman's work.

Rule No. 71 provides for a pay differential to Carmen who perform welding work. This differential was paid to Carman Nowak and is not a point of contention in this case.

In a claim of this nature, the burden of proof must be borne by the petitioning party. In this record, that necessary burden of proof has not been met by the Organization. No Rule has been cited which prohibits the Carrier's use of on-duty Carmen to perform carman/welder work which they are qualified to perform incidental to their other carman duties. Neither has the Organization effectively rebutted Carrier's position relative to the history of such incidental welding work being performed by on-duty Carmen.

Therefore, this claim must be and is denied.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1988.