

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

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the N&W Railway Company violated the current agreements and Memorandum Agreement dated November 3, 1980 when they refused to allow Carmen Welders to perform the welding in the Foundry on a day-to-day basis, if no job is advertised to Locomotive Welders. The Carrier abolished the position of Welder in the Foundry and are using other than Carmen to perform welding duties on a day-to-day basis.

2. That because of such violation, the Norfolk and Western Railway Company be ordered to allow and assign Carmen Welders to perform welding in the Foundry on a day-to-day basis, if needed or until a Welder's position is bulletined to Locomotive Welders, as per Agreement dated November 3, 1980.

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.

As Third Party in Interest, the Sheet Metal Workers Association was advised of the pendency of this dispute, and filed a Submission with the Division.

The Organization contends that Carrier violated the November 3, 1980 Memorandum Agreement when the work of a Locomotive Welder was being performed by a person in the foundry craft. The claim filed on September 18, 1988, is referenced in part hereinafter:

"On July 29, 1988, it was brought to my attention that the Locomotive Welder position in the Foundry was abolished; and was being performed by a person in the foundry craft. This is in violation of Memorandum Agreement signed November 3, 1980. We respectfully ask that if no job is bulletined in the foundry that a Carman Welder be used as in the past. At this time, we are not asking pay for anyone, we just want what the Agreement states."

By letter dated November 16, 1988, Carrier responded to this claim. (In part referenced.)

"We have reviewed your request and we do not find a violation of the Memorandum Agreement or any rule of the current Controlling Agreement. Notwithstanding, there is not a sufficient amount of welding being performed to support or justify a bulletined position or for a welder on a day-to-day basis."

As the claim progressed on the property the General Chairman further noted the following information: (In part referenced)

"Roanoke Car Shop is a manufacturing facility, the foundry is located there. It is the only foundry on N&W property. The practice of using Carman Welder in that area is a longstanding past practice. This all in conjunction with the Memorandum Agreement dated November 3, 1980. If there is sufficient welding to advertise a job then it would be advertised to the Carmen's craft as per the November 3, 1980 Agreement. Certainly if there is not sufficient welding for job advertisement to the Carmen's craft, then a Carman Welder should be used when needed as is past practice at the foundry in Roanoke Shops. (See General Chairman's letter dated March 15, 1989 Employees Exhibit B6 of 10.)"

The November 3, 1980 Memorandum Agreement is reproduced as follows:

"In conference on September 3, 1980, it was agreed by all concerned that if it is necessary to have additional Welders on a day-to-day basis in the Foundry, Carmen Welders may be utilized as in the past. However, if it is necessary to bulletin Welder positions in the Foundry, the Welder positions will be advertised to Locomotive Welder.

It is also understood and agreed that the work of each craft shall remain unchanged as pertaining to Carmen, Locomotive Welders and Boilermakers, that is, the craft that commences a project or repairs, excluding work in connection with retirement of equipment, shall be utilized on such project or repair until its completion."

In considering this case, the Board concurs with Carrier's position. Firstly, there are no persuasive indications that the amount of welding performed in the Foundry Shop warrants the bulletining of a Locomotive Welder's position. Secondly, the use of the word "may" in the first paragraph of the November 3, 1980 Memorandum Agreement clearly indicates that Carrier has some degree of flexibility regarding the use of other employees to perform welding work. In the absence of evidence showing that the amount of welding work at the Foundry justified the establishment of a Locomotive Welder's position or that the word "may" in the Memorandum Agreement meant "will" as construed by demonstrable on-situs practice or that Carrier's action breached a specific rule or rules in the controlling scheduled Agreement, the Board, of necessity, must find for Carrier's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.