

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**Third Division**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

"Claim of Benedict Benson for welder's rate of 78½ cents per hour in lieu of welder helper's rate of 47 cents per hour."

**STATEMENT OF FACTS.**—The following statement of facts was jointly certified by the parties:

"A track welding crew was organized on the Lake Superior Division in May 1936. This was in accordance with the usual practice of organizing track welding crews at the beginning of the maintenance season. This crew consisted of a welder, a welder helper, and a laborer who also acts as a flagman. The positions of welder and welder helper were bulletined. Mr. Benson made application for both positions. A man senior to Mr. Benson secured the welder's position. Mr. Benson secured the position of welder helper. The track welding outfit is and has been for many years provided with two welding torches; the welder helper does welding when not engaged in other work."

The agreement between the parties bearing effective date of April 1, 1936, was placed in evidence.

**POSITION OF EMPLOYEES.**—Employees rely on Rule 55, reading:

"An employe working on more than one class of work four (4) hours or more on any one day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower rated position, his rate of pay will not be reduced."

and contend as follows:

"As indicated in Joint Statement of Facts, a track welding crew was organized on the Lake Superior Division in May 1936. Bulletins were posted for the positions of one welder, or sometimes called welder foreman, at the rate of 78½¢ per hour, and one welder helper at 47¢ per hour. In addition to the welder and the welder helper, the crew consisted of one laborer, which position, however, was not bulletined. Being a welder with ten years' experience, Benedict Benson bid for the position of welder, but in that that position was assigned to a senior welder, Benson then bid for the position of welder helper, to which he was assigned."

They also quote from two letters from claimant, as follows:

"My wages are 47¢ per hour. The welder's rate is 78½¢ per hour. Now they classify my job as a welder's helper, but I don't see how they can, when I am handling a torch the same as a welder, and they expect me to put out as much work, and I know my work is just as good as the welder's work, but just the same I get only 47¢ per hour."

"Would like to state that we started out on May 5th and worked up to and including Oct. 12, 1936, and according to time slips of Mr. William Thorn, welder, I worked 134 days handling welding torch for welder helper's rate of pay."

that would be paid him. He did this of his own free will. He is not now in position to complain that because he performed the service he knew he would perform and has been paid the rate he knew he would be paid, that he should be paid the welder's rate rather than the welder helper's rate.

"The employees rely on Rule 55 of the Maintenance of Way Schedule to sustain this claim. Rule 55 of the Maintenance of Way schedule which became effective April 1, 1936, is identical to Rule 67 of the Maintenance of Way schedule which became effective March 1, 1922. There has, therefore, been no change in the rule that would change the basis of payment under the conditions existing in this case. Mr. Benson was paid as he and other men had been paid under Rule 67 of the 1922 schedule.

"With respect to the application of Rule 55: Mr. Benson performed the service usually done by a welder helper. There is, therefore, no basis even under a literal interpretation of this rule for his claim for the welder's rate of pay.

"Track welding crews have been used on this Railway for more than ten years and the organization of these crews and the work performed by the members of these crews had been the same during this time. This is the first claim that has been presented where a man filling a helper's position has contended he should be paid the welder's rate.

"In the opinion of Referee Corwin sitting with the First Division, National Railroad Adjustment Board, in cases covered by Awards Nos. 1082, 1083, 1084, and 1085 of that Division, he said:

"There is and can be no stronger indication of what interpretation this Division in any case of doubt should adopt than that which the parties have given a rule, and a practice, uncontested over a period of years, must justly be regarded by each party as indicating the course of conduct for it to follow. But the Carrier in the disputes we are now discussing has just as much right to rely upon an accepted interpretation as the committee had there, and we cannot disregard an uncontroverted custom of twenty years."

"The circumstances that Mr. Benson is a welder does not change the application of the principle enunciated by Referee Corwin from what it would be were Mr. Benson not a welder. There has been an uncontroverted custom of more than ten years to pay welder helpers the rate of such position under the same conditions of service that Mr. Benson was paid this rate."

**OPINION OF BOARD.**—In the "Joint Statement of Facts" in this case, both employes and carrier are in agreement that the track welding crew in the Maintenance Department of the railroad consists of or is made up of a welder, a welder helper, and a laborer; the latter not being concerned in this dispute; that these positions are established as a necessary part of each welding crew is also a matter of agreement, further substantiated by bulletins issued by the carrier. The employes and the carrier are also in agreement that a track welding crew or outfit is and has been for many years provided with two welding torches, one of which is used by the welder and the other by the welder helper when not engaged in other work. The fact that the welder crew in this case were both qualified and experienced welders does not in itself influence the claim. Both positions, those of welder and welder helper, were bulletined for exactly what they were and secured by seniority rule, and in the proper application of their duties, regardless of the experience or qualifications of either the welder or the welder helper, no question should be involved as to the proper rates to apply. There is no dispute so far as the service rendered by the welder or his pay is concerned. As to the welder helper, the claim is made that he performed welder's work and was entitled to welder's rate of pay. The fact that the inclusion of a welder helper was in accordance with the usual practice of organizing track welding crews, and that such a position was properly bulletined is indicative that there was and is need for the service of a welder helper to perform such duties as are required of him by the position and by the welder whom he is employed to help. A helper, whether it be to a welder or to a carpenter, is one who helps. In other words, he is an assistant. In the case covered by this dispute there can be no question but that an undetermined amount of work as a welder helper was performed by this claimant during the period in which he was employed, inasmuch as the service of a welder helper is indicated as being required with every crew.

As to the practice of providing each crew with two welding torches and requiring the welder helper to do welding when not engaged in other work, so long as such work is done under the guidance and supervision of the welder, the work is indicated and would be classified as that of a helper, regardless of the qualifications and experience of the employe occupying the position of helper. Where, however, advantage was taken of the helper's qualifications and experience, whether by the carrier or its representative, and the helper was assigned to do the work of a welder without performing the work as an assistant to or under the guidance and supervision of the welder, then the helper would be entitled to the application of the first paragraph of Rule 55 of the current agreement between the Northern Pacific Railway Company and the Brotherhood, which reads:

"An employe working on more than one class of work four (4) hours or more on any one day will be allowed the higher rate of pay for the entire day. \* \* \*."

In the testimony submitted by the employe occupying the position of welder helper, as outlined in the "Position of Employes," the statement of the claimant that he is classified as a welder helper while he is handling the torch the same as a welder, is expected to put out as much work as the welder, and has the knowledge that his work is just as good, is not sufficient testimony to justify an allowance of the claim, as the question would arise as to whether this work was done as helper or an assistant to and under the supervision and guidance of the welder in charge.

There is weight, however, to the statement of the welder in charge that this man was expected to do as much as he was, provided that work was not done as an assistant to him, and particularly to the statement that the helper had been sent away from his crew to perform welding duties under his own supervision. As in the case of helping the welder in charge, so here too is an undetermined amount of work claimed in the performance of duties as a welder under his own supervision and not as a helper or an assistant and for this, when determined, the claimant should be allowed the higher or welder's rate of pay, under the application of Rule 55 of the agreement.

**FINDINGS.**—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim be referred back to the parties to the agreement to determine the number of days during which, under the application of Rule 55, the applicant was employed as a welder helper and the number of days during which, under the application of the same rule, the applicant served as a welder.

#### AWARD

Claim sustained for such time as is determined in negotiation by the parties to the agreement that the claimant served as a welder under the application of Rule 55.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 19th day of April, 1937.