

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Elwyn R. Shaw, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**UNION TERMINAL RAILWAY COMPANY, ST. JOSEPH,**  
**MISSOURI**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that M. E. Harber be paid for two hours overtime on June 26, 1941 account not being called to perform work repairing switch in North Yard Belt.

**EMPLOYEES' STATEMENT OF FACTS:** M. E. Harber is employed by the Carrier and classified as assistant foreman. No one is employed or classified as section foreman. Harber supervises all track work performed in the terminal.

J. E. Barber, who was called to repair the switch in question on June 26, 1941 is employed as a laborer in the gang supervised by Harber and is classified as a laborer-welder.

On the date involved in this claim the rate of pay for laborer-welder was 55½ cents an hour; the rate of pay for assistant foreman was \$135.00 a month on the basis of 204 hours a month.

Harber holds seniority as assistant foreman, is qualified and performs the duties of a foreman, reporting to the Engineer. Harber was available to perform the work for which Barber was called. Barber's seniority was restricted to that of a laborer-welder.

**POSITION OF EMPLOYES:** There is in effect an agreement between the Carrier and the employes on this property with an effective date of October 16, 1935, the following rules of which are applicable in this instance:

Article 1, Rule 1—Scope:

"These rules govern the hours of service and working conditions of all employes in the maintenance of way department, not including supervisory forces above the rank or classed as Track Foreman."

Article 2, Rule 2—Seniority:

"(a) Seniority begins at the time the employe's pay starts. Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railroad.

"(b) Seniority rights of laborers as such will be restricted to their respective gangs, except that when force is reduced, laborers affected may displace laborers with the least seniority on their seniority district.

"(c) Laborers will have the right, when forces are again increased, to return to their original section or gang upon making proper application."

Article 5, Rule 19—Supervisory Employees:

There is also shown in Carrier's Exhibit C a statement of overtime paid to various classes of employees in the M. of W. track department who were called outside of their regular assigned hours to repair switches and broken rails during period January 1, 1938 to May 31, 1941. This statement submitted to confirm the Carrier's contention that it has heretofore been the practice and not questioned by the Employees to call the welder to repair broken rails as was done in this instance.

There is no rule in the wage schedule agreement with the M. of W. Employees effective October 16, 1935 to justify sustaining their claim in the absence of which the Carrier requests that it be denied.

**OPINION OF BOARD:** At the time which this claim is concerned, June 26, 1941, the Carrier had in its employ in the Track Department at St. Joseph, Missouri, claimant M. E. Harber, an Assistant Foreman assigned to service 8:00 A. M. to 5:00 P. M. at a monthly salary of \$145.20, which would be at the rate of slightly over 71¢ per hour. There was also a Mr. J. E. Barber employed as a track welder during the same hours at a wage of 60½¢ per hour, and 11 laborers at 43¢ per hour. At about 8:00 P. M. on the date above mentioned a broken rail was found in the yards and J. E. Barber, a track welder, a track laborer when not working as a welder, was called to repair the broken rail, which required the cutting of holes with an acetylene torch and bolting the parts together. For this service he was paid two hours' overtime. The Employees' contention in the matter is set forth in a letter from their General Chairman dated August 7, 1941, and which states as follows:

"It is our contention that inasmuch as Mr. Harber is foreman in charge of the work on his section that he is entitled to be called for any track work on his section, and we are asking that Mr. Harber be paid the two hours mentioned above and that he be called in the future for such work instead of the welder who holds no seniority rights in the track department and is not entitled to be called for regular track work."

The contention amounts to a claim that a Foreman must be called in all cases to supervise the work of a laborer-welder, whether such foreman is needed or not. Thus, if a yardmaster should notice a broken rail he would, under this contention, be required to call the foreman, the foreman call the welder, and the two of them draw overtime for the work of one. There is nothing in the record to indicate that Harber could have actually done the welding even if called, and the Employees concede that that might possibly be true without making the outright admission.

The record before us shows that it has always been the practice of the Company to call only such employees as are actually needed to do the work of welding rails and repairing switches, and the only man on the seniority list as of January 1, 1941 holding seniority as a welder is the man who was called in this case. In 58 cases shown by the record, foremen were called 9 times, welders 46 times, and the other three cases were handled by laborers. This is a reasonable and sensible way to handle the business in the interests of the public and railroads. It neither damages nor penalizes anyone, but gets the work done in the most reasonable manner and at the most reasonable cost. Agreements between carriers and brotherhood are intended to promote efficiency as well as harmonious relations, and the public looks to this Board for fair interpretations of the rules to that end. Jack Barber held seniority as a welder. A welder was needed and Jack Barber was called, he was paid for his overtime, and no one else was needed and complete justice has been done. The claim must be denied.

**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 employees involved in this dispute are respectively carrier and employees 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 must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 14th day of October, 1942.