

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Agreement by not assigning to the Water Service Forces the work in connection with the installation of and welding of pipe lines at DeSoto, Missouri, during the period July 8, 1947, to August 6, 1947, inclusive;

(2) That Water Service employees:

Earl McLane	J. L. Asbridge	M. R. Rhodes
M. E. Eaton	Phil Stroup	Wm. H. House
F. Fuhrmann	Quintina Schmitt	D. B. Treece
P. R. Fuhrmann	H. F. Taylor	T. P. Rogers

be compensated a day's pay each pro rata, at their respective rates for each day the Mechanical Department Forces performed this work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of June and early July of 1947 and continuing through until August 6, the Carrier was installing a pipe line in the shops at DeSoto. The pipe installed was welded at the joints.

At the beginning of this project the Carrier assigned a water service mechanic to the performance of this work. However, under date of July 7, 1947 the Carrier replaced the water service repairmen performing this work with welders from the Mechanical Department. These Mechanical Department welders worked through until the completion of the job.

At the beginning of this project the Carrier set up a gang of water service mechanics and helpers. During the installation of this pipe these water service employees performed the work of welding of pipe joints. After July 7, 1947, however, the Carrier assigned certain shop craft welders to work with this B&B gang in the performance of this work. During the period July 8 to August 6, 1947, inclusive, the Carrier required the Mechanical Department employees to work with the water service men in welding the pipe joints referred to.

In discussing this claim upon the property the Carrier had stated that the necessary welders were not available in the Water Service Department and has stated that the use of the Mechanical forces was to supplement the

during the time for which he is claiming pay, as is shown in the Carrier's Statement of Facts.

It is the further position of the Carrier that the claimants were not qualified to do the work which they claim they should have been permitted to do. The claims as presented to the Board and as shown in the Statement of Claim indicate that the claimants desire to be paid a day's pay each at the pro rata rate of their respective rates for each day the Mechanical Department forces performed the work referred to in Part (1) of the claim. Note should be taken of the fact that the claim is not for the welders' rate of pay in all instances because, by reference to the record of employment, as shown by the Carrier in its Statement of Facts, many of the claimants were not employed as welders. The Carrier is at a loss to understand why these employees should be compensated at their rates of pay as helper and as repairman.

The claim in itself is so indefinite that it has been difficult to obtain from the Employees any good line of reasoning as to why any employee of the Water Service Department should feel that he has been unjustly treated or that he has any bona fide claim supported by any rule of the agreement.

In the light of the facts, as are clearly shown in the Carrier's Statement of Facts, the claim in itself borders on the ridiculous. Men who were not on the Water Service payroll, and men who were working as laborers, helpers and repairmen, most of whom were short service men, were given employment, promoted to higher classifications and some of them given an education in some of the fundamentals of pressure welding, now come seeking double pay for each day between July 8, 1947 and August 6, 1947, when the Carrier, of necessity, put men known to be skilled in welding to work at the De Soto Shops because it did not have available men in its Maintenance of Way Department capable of performing the work.

A close study of the facts should be sufficient in itself for a complete denial of the claims as presented to the Board in such an indefinite manner from a standpoint of fairness or from a standpoint of application of the rules of the working agreement.

(Exhibits not reproduced).

OPINION OF BOARD: During the time in question, the Carrier was installing a pipe line in its shops at DeSoto, Missouri. The pipe installed was welded at the joints. At the beginning of this project, the Carrier established a gang of Water Service mechanics and helpers, who originally installed the pipe and did the welding. From July 7, 1947, through August 6, 1947, the Carrier relieved Claimants of the welding work and assigned that work to other welders and helpers, employees from the Mechanical Department. The Carrier states that due to the lack of skilled welders in the Water Service gang, it was necessary to use the Mechanical Department welders, and the Claimants allege that Carrier's action was in violation of the Scope Rule of the Agreement.

There is no question that the work here involved is covered by the Scope of the Agreement between the parties. The Carrier does not deny this but asserts that since the work performed by the Water Service welders was not satisfactory, it had no alternative but to call in the Mechanical Department welders to do the work. It is surely a managerial prerogative to control the size and abilities of the Carrier's working force. If the Carrier finds itself with a Water Department unqualified to do the work required, it does not have the right to set aside the conditions of its Agreement and assign the work to employees not covered by the Agreement. The Carrier should have built up the Water Service Department to sufficient strength and efficiency to perform the work either by timely training or by hiring new, skilled men. There is no evidence here that Carrier attempted to hire new men and what training was given Claimants was not sufficient to develop their skill as welders until after the period covered by this claim.

Rule 6 (a) of the effective Agreement provides for temporary transfer of employees from one seniority district to another and states:

“Employees or gangs temporarily transferred by direction of the management, from one seniority district to another, will retain their seniority rights on the district from which transferred.”

The record states that there were a number of skilled welders of the Water Service Department in St. Louis, approximately 40 miles from DeSoto. The Carrier made no attempt to have any of those employees transferred temporarily to do the welding in question. Former Awards of this Board have sustained the position of Employees in this case in that manpower shortage or conditions brought about by Carrier's failure to adequately staff its forces is no excuse for violating the effective Agreement and assigning work encompassed in the scope of said Agreement to employees outside thereof, and this claim will be sustained. See Awards Nos. 4158, 4390 and 4491.

Part (2) of the claim is for compensation of named Water Service employees at their respective rates for each day Mechanical Department forces performed the work in question. The Carrier maintains that one of the Claimants was not working in the Water Service Department at the time claimed, and others were not welders or welders' helpers. The only Mechanical Department employees used on the work at DeSoto were welders and welders' helpers, and the only work taken from Claimants was work of those two classes. It follows that Claim (2) will be sustained for all claimants who were rated as welders or welders' helpers in the Water Service Department during the period July 8, 1947 to August 6, 1947, inclusive.

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 Carrier violated the Agreement.

AWARD

Claim (1) sustained. Claim (2) sustained in part, as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.