

Award No. 5041
Docket No. MW-4901

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned five employes of Teleweld, Inc., a welding contractor, to end harden and cross grind rails on the Louisiana Division for a twenty day period during January, 1948.

(2) That Lead Welder H. G. Atwood, Welder J. N. Till, Grinder Operator A. O. Freeman and Welder Helpers R. L. Foreman and C. A. Cockrell be allowed twenty days' pay each at their respective rates of pay, because of the Carrier's improper action referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: In January of 1948 the Carrier employed the Teleweld Company to perform rail end hardening and cross grinding of the Carrier's tracks on the Louisiana Division between Jackson and Canton, Mississippi. This contracting company employed five men and consumed twenty days in the performance of this referred to work. This work is performed by the use of electric welding equipment.

Track welding work, both acetylene and electric, is covered by the scope of the Maintenance of Way agreement. The Carrier employs Maintenance of Way welders on this Louisiana Division.

The claimants H. G. Atwood, Lead Welder, J. N. Till, Welder, A. O. Freeman, Grinder Operator, R. L. Foreman, Welder Helper, and C. A. Cockrell, Welder Helper have seniority rights in their respective ranks in the welding class.

The agreement in effect between the two parties to this dispute, dated September 1, 1934, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in the Employees' Statement of Facts, the Carrier assigned, or employed, the Teleweld Company to perform rail end hardening and cross grinding on the Carrier's tracks on the Louisiana Division between Jackson and Canton, Mississippi, in January, 1948.

Rule 2 of the Effective Agreement reads as follows:

"Seniority rights of all employes are confined to the sub-departments in which employed. Sub-departments are defined as follows:

1. That the claimants were not, by contract or agreement, entitled to the work here in dispute.
2. The electric welding equipment and process used by Teleweld, Inc., was patented; therefore, unavailable to the carrier.
3. That the carrier did not possess and was not justified in acquiring the equipment necessary to perform the work.
4. That the carrier's engineering staff did not possess the specialized training and experience required to plan and direct the work.
5. That the claimants did not possess the specialized training and experience necessary to perform the work.

OPINION OF BOARD: In January 1948, Carrier contracted with the Teleweld Company to perform rail end-hardening and cross grinding on Carrier's tracks between Jackson and Canton, Mississippi. The work was completed in twenty days. Claimants contend that the work belonged to track welders and welders helpers under the Agreement. Claimants demand twenty days' pay because of Carrier's violation of the Agreement in farming the work to a contractor outside the scope of the Maintenance of Way Agreement.

The record shows that subsequent to 1931 the Carrier was able to purchase end-hardened rail for use in its tracks. The problem of end-hardening rail purchased from steel mills which did not perform that function and that which had to be built up as a matter of maintenance, was not solved to the satisfaction of the Carrier. It appears that Teleweld, Inc., developed an improvement for end-hardening rail by an electrical process. Carrier decided to contract with Teleweld, Inc., to end-harden a few miles of track that had not been so treated.

The Carrier contends that the end hardening of rail on the property is not welding and therefore not work reserved to welders and welders helpers under the Agreement. Whether or not the end-hardening of rail is actually welding is not material here. It is so considered in the railroad industry. We are of the opinion therefore that the end-hardening of rail on the property by whatever process employed is work reserved to welders under the Maintenance of Way Agreement.

Carrier urges that the electrical process employed by Teleweld, Inc., was a new development and that the contract was entered into solely to test its effectiveness. Carrier states that the process was patented and the Carrier did not have the machines necessary to the performance of the work.

The work of end-hardening rail belongs to welders under the Maintenance of Way Agreement. The record does not show that the machinery required was not obtainable or that it would have been unduly costly to have obtained it. It is not pointed out in the record why the machines could not have been operated by the employees classified as welders under this Agreement. No attempt was made to handle the matter with the Organization to whom the work belonged. The work is not unusual in the railroad industry, in fact it continuously exists. The fact that a new electrical process is to be used is not controlling unless it be shown that the employees entitled to it are not qualified to perform it, or that the equipment required was costly or rarely used. Under such circumstances, Carrier is not justified in ignoring its Agreement with the maintenance of way employees or in farming the work out to those not within it. The foregoing conclusions are supported by Awards 4671, 4701, 4765, 4784. A sustaining award is required.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1950.