

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SEABOARD AIR LINE RAILROAD COMPANY**

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

- (1) That the Carrier violated the agreement when it required or permitted employees other than Welder Helpers to operate rail grinders at Rockingham, North Carolina, on February 12 and 15, 1951;
- (2) That Welder Helper S. S. Hames be allowed sixteen hours' pay at his straight time rate because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The work of grinding of the roll or flow of metal from frogs, rails and switch point rails is customarily assigned to Welder Helpers on this property in accordance with the provisions of Rule 22 which reads as follows:

"RULE 22

TRACK POWER TOOL OPERATION:

Power Bolt Tighteners, Adzers, Spike Pullers and Mowing Machines will be confined to the track sub-department and will be in charge of Assistant Rail Laying Gang Foreman when used for rail laying operations and in charge of an Apprentice Foreman when used on sections or otherwise.

Operation of Rail Grinders will be confined to the Welding sub-departments and will be operated by Welder Helpers."

On February 12, 1951 and February 15, 1951, an Apprentice Foreman and a laborer were assigned to operate a rail grinder to grind switch point rails, stock rails and frogs at Rockingham, North Carolina.

Friction between the wheels of passing equipment and the running portion of rails, frogs and switch point rails, normally cause a flow of the surface metal to the sides of the rails, which is particularly objectionable on switch points, stock rails and frogs. It is this roll or flow of metal that was

Regular welding forces are not deprived of any work because they never performed this particular work. A Welder Helper is assigned to operate large rail grinder which is necessary in connection with regular welding work of building up rail joints, frogs and switch points. The grinding off of overflow or roll of metal on frogs and switch points with the portable grinder is not welding work and if by stretch of imagination it were deemed to be work to be performed by a Welder Helper, it would become welding work and would necessitate the assignment of a regular Welder Helper to perform only this particular work, moving from section to section as needed. This would mean additional Helpers because a Helper now regularly employed with a Welder could not be removed therefrom to go out and do the grinding work with the portable grinder in addition to his regular work. No doubt if the referred to work were classified as welding work then it would be claimed that a Welder should be employed therefor in addition to a Helper. The only other alternative would be to go back to the old unsatisfactory and inefficient method of removing the overflow and roll of metal with a hammer and chisel or permit the hazardous condition of use of frogs and switches with the overflow and roll of metal and hope when it broke off it would not damage the frogs and switches to the extent they would have to be replaced.

It cannot be successfully argued by the Organization that Rule 22 contemplated this small portable grinder in view of the fact that these machines were not purchased by Carrier until two years after the rule was negotiated. The claim is, therefore, an attempt to secure a broader coverage of the rule through Board dictate than was ever intended when it was negotiated.

The Carrier cannot see how the work of removing the overflow or roll of metal by section forces with the small portable grinder could be properly classified as welding work. It is certainly beyond the realm of reason to hold that the mere substitution of a small portable machine for the hand tools formerly used would or could in any manner alter the nature or class of work which is and has always been performed on the property by section forces.

There is no merit to the claim and Carrier respectfully requests the denial thereof.

Carrier affirmatively states that all data contained herein has been made known to or discussed with representatives of the Organization.

OPINION OF BOARD: This claim states that the Carrier violated the terms of the effective Agreement on February 12 and February 15, 1951, when it required or permitted an Apprentice Foreman and a Laborer to operate rail grinders at Rockingham, North Carolina; that the Welder Helper, S. S. Hames, be allowed sixteen hours' compensation at the pro rata rate because of the violation.

The Organization states that Rule 22 of the effective Agreement was violated.

Rule 22 reads as follows:

"TRACK POWER TOOL OPERATION:

"Power Bolt Tighteners, Adzers, Spike Pullers and Mowing Machines will be confined to the track sub-department and will be in charge of Assistant Rail Laying Gang Foreman when used for rail laying operations and in charge of an Apprentice Foreman when used on sections or otherwise.

"Operation of Rail Grinders will be confined to the Welding sub-departments and will be operated by Welder Helpers."

The Carrier states that the rail grinder used was smaller than the one used generally by welders and that there was no welding performed; that the Carrier purchased this small 1½ H.P. Portable Grinder in 1943 and it has been used by section forces since that time without any claims having been filed by the Organization.

Many Awards of this Board have held that repeated violations of an agreement do not change the agreement. Here we have a clear, understandable rule that states the operation of rail grinders will be confined to the welding sub-departments and will be operated by Welder Helpers. The rule does not specify the size of the rail grinders and, therefor, regardless of size or horsepower, the use is governed by Rule 22.

The Board finds that the Carrier violated the terms of the Agreement and that the claimant be compensated at the pro rata rate for the sixteen hours set forth in the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 terms of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.