

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

- (1) The Carrier violated the Agreement when it assigned employees other than Maintenance of Way Welders to perform bridge welding work on various dates in May and June, 1953;
- (2) Maintenance of Way Welder D. V. Arity now be allowed pay at the Welder's rate for an equal number of hours as was consumed by employees of other classes in performing the welding work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant employee, Mr. D. V. Arity, is employed and holds seniority as a Maintenance of Way welder and, since March 1, 1943, has performed track, bridge and other welding work in the Maintenance of Way Department. As of April 6, 1953, Mr. Arity was relieved of a bridge welding work assignment and was then assigned to frog welding work.

Messrs. F. T. Wilson and H. McCall are employed and hold seniority as Bridge and Building Foremen, each of whom exercises supervision and jurisdiction over one of two respective steel bridge crews, which consists of a number of Steel Bridge Workers. None of the employees assigned to either of these two crews hold seniority as a Maintenance of Way Welder or any seniority whatsoever in the Maintenance of Way Welding Sub-Department.

On May 4 and 5, 1953, Steel Bridge Workers assigned to and working under the direction and supervision of B & B Foreman F. T. Wilson performed bridge welding work on Bridge Z-14-A at the Chicago Terminal, consuming four (4) and five (5) hours respectively or a total of nine (9) hours in the performance of such work.

On May 15, 18, and 19, 1953, Steel Bridge Workers assigned to and working under the direction and supervision of B & B Foreman H. McCall performed bridge welding work on Bridge A-8½ at the Chicago Terminal, con-

submission of this claim, nor any prior years have the employes claimed that steel bridge workers could not perform such incidental welding in relation to their bridge work, nor have the employes contended that maintenance of way department welders have any exclusive right to such incidental welding work. The absence of such claims for so many years prior to the submission of the instant claim shows that the parties were in accord and that such a claim as the instant one is entirely without merit.

(4) The nature of the welding work performed by Bridge and Building Department steel bridge workers is such that it would be impossible to arrange for a maintenance of way welder to do all of the welding work. The welding done by steel bridge workers is irregular and has to be performed as the work progresses. It is impossible to foresee in advance how much welding will be required or just when it will be required. Under such circumstances it would not be possible to preserve the work exclusively for a maintenance of way department welder, nor do the rules require that this be done.

(5) This claimant could not have performed the service involved, because he was at the time performing welding work in a different territory on a full time basis and it would have been absolutely impossible for him to perform both jobs. Under the circumstances it is clear that claimant lost no earnings whatsoever. For the Third Division to sustain such a claim would be in excess of its power inasmuch as there is no penalty rule to support it.

(6) Carrier's Exhibits "A", "B", "C", "D" and "E", which are statements made by present or former steel bridge workers who have actually done the work involved, show beyond question that structural welding related to steel bridge work has been performed by steel bridge workers through the years both before and after the year 1940 which is when Rules 4 and 46 became effective. In other words, the established and accepted method of operation through the years has been for steel bridge workers to do incidental structural welding just as was done in these instances.

(7) Carrier's Exhibits "F", "G" and "H" fortify the carrier's position that the structures here involved are steel bridge structures and that the structural welding in connection therewith is work that was properly performed by employes holding seniority as steel bridge workers in the Bridge and Building Sub-Department.

In view of these facts we submit that this claim is entirely without merit and should be denied.

All data contained herein has been presented to the organization and conference has been held on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Two sections of Rule 46 of the applicable agreement are here at issue:

(c) "An employe assigned to the erection, maintenance, or dismantling of steel bridges and to the performance of related bridge iron work, such as riveting and rivet heating, will be designated as a steel bridge worker."

(h) "An employe assigned to the operation of any welding device used in repairing rails, hardening rail ends, repairing frogs and switches, bridge welding, and such other welding in the Maintenance of Way Department, will be designated as a maintenance of way welder."

The claim before us is that the Carrier violated the Agreement when it "assigned employes other than Maintenance of Way Welders to perform bridge welding work on various dates in May and June, 1953." The claim is made on behalf of D. V. Arity, a Maintenance of Way Welder.

Carrier says the "sole issue in the instant dispute is whether or not Rule 46 (h) of the effective agreement grants employes in the Maintenance of Way Welding Sub-department the exclusive right to perform structural welding in a sub-department in which they hold no seniority."

Organization, on the other hand, argues "that is not the issue in this dispute. The issue is whether or not Rule 46 (h) grants employes in the Maintenance of Way Welding Sub-department the exclusive right to perform all welding, and particularly bridge welding, in the Maintenance of Way Welding Sub-department."

The applicable agreement, Rule 4, establishes four sub-departments as follows:

1. Track Sub-department;
2. Bridge & Building Sub-department;
3. Roadway Equipment and Machine Sub-department;
4. Maintenance of Way Welding Sub-department.

Carrier agrees that the seniority of employes in the Maintenance of Way Welding Sub-department extends over the entire system.

After a careful review of the presentations of the parties and the awards each cited, we are compelled to agree with the following argument offered on behalf of Organization:

"It is certainly true that if the parties, including the Carrier, had intended that 'bridge welding' was to be included in 'related bridge iron work' assigned to the Bridge and Building Sub-department, they would not have included 'bridge welding' work expressly and specifically in the work of the Welding Sub-department.

"Certainly, if the parties had even the slightest intention that the language 'related bridge iron work' contained in Rule 46 (c) included 'bridge welding,' they would have absolutely no reason to and would not have so precisely and explicitly included bridge welding in Rule 46 (h)."

A sustaining award is, therefore, in order.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1957.