

Award No. 8083
Docket No. MW-7853

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it contracted with the Morrison Railway Supply Company, whose employees hold no seniority under the effective Agreement, for the performance of welding work on the Carrier's tracks, frogs, switches, etc.;

(2) Each of the employees holding seniority in the Track Welding group be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier employs Track Welding Gangs to perform various welding work on the Carrier's tracks, such as the building up of battered rail-ends, frogs, switch points, etc.

Welders, Assistant Welders, and Welder Helpers are classes of employees specifically embraced within the Agreement between the parties hereto and have regularly performed track welding work to the Carrier's satisfaction.

Nonetheless, the Carrier contracted with the Morrison Railway Supply Corporation for the performance of certain items of track welding work, without benefit of negotiation or approval of the Employees' representatives. The employees of the Morrison Railway Supply Corporation do not hold any seniority under the effective Agreement.

Work was started by the Contractor's forces on or about December 15, 1952, and completed on or about June 1, 1953.

The Carrier's action was protested by the Employees' representatives and suitable monetary claims filed as an incentive to prevent further violations.

The Carrier declined the claim contending that a new method of performing track welding work was introduced on the property, further con-

These unnamed claimants were fully occupied with their assigned duties as oxygen-acetylene welders during the time electric welding on the track was performed by the contractor. No single one of Carrier's Maintenance of Way employees was deprived of earnings he was entitled to or any work he was qualified to perform.

Carrier asserts that except for the fact repairs were needed on switches and frogs and that there was an accumulation of such work to be performed, such materials would have been removed from track and electric welding thereon would have been performed by qualified employees of another craft.

For each and all of the reasons stated, Carrier has shown the claim of Employees to be wholly without merit. It should, in all respects, be denied, and Carrier requests your Honorable Board to so hold.

All matters contained herein have heretofore been presented to the duly authorized representative of the Employees, and were made a part of negotiations on the property.

OPINION OF BOARD: The issue before us may be restated as follows: "Is electric welding of manganese frogs and switches in place in track, work which falls under the agreement so that it may be performed only by employees covered by the Clinchfield-Maintenance of Way agreement and not by an outside contractor?"

The scope rule or provision of this agreement is a brief one. It reads:

"The rules contained herein govern the hours of service, working conditions and rates of pay of all employees in the Maintenance of Way and Structures Department as listed in Appendix A attached hereto, represented by the Brotherhood of Maintenance of Way Employees."

Appendix A lists Welders, Assistant Welders and Welders Helpers, and shows their rates of pay.

There is a note at the end of the Appendix which adds, "Bridge and Building employees required to use gas or electric torch will be paid (5) cents per hour above their regular rate while using such torch." This is the only reference in the agreement to electric welding and it refers only to Bridge and Building employees.

See The above provisions, in actual language, do not define or describe any work reserved to anyone. Even though the language does not adequately describe the kinds of work reserved to certain job classifications it is understood in the railroad industry, and many awards of the Board have held, that the work traditionally and customarily done by the covered employees, (See award No. 7216) and the work they are regularly performing at the time of negotiation of the agreement, is presumed to be reserved to them unless the agreement makes exceptions."

It has been stated many times that work of a class belongs to those for whose benefit the agreement was made, (See award No. 3955) and that those functions generally known to be part of a craft will generally accrue to that craft. (See awards No. 4800 and 7216)

Brevity or ineptness of language is not necessarily fatal. If the intention of the parties can be ascertained it should prevail. Where intention cannot be determined from the language, and the four corners of the contract, and it is uncertain what work was intended to accrue to a particular craft, or how broadly a term may be interpreted, then practice on the property becomes material.

The practice on the property is material in this case, and we must determine the question of whether the type of work involved here was tradi-

tionally and customarily done by claimants and what was the practice when the present agreement was negotiated.

The organization's contentions may be summarized as follows:

(a) Welders, assistant welders and welders helpers are listed as job classifications in the Maintenance of Way agreement.

(b) The term "welders" is self-explanatory and all inclusive; there is no need for extrinsic evidence to further explain or confuse it.

(c) Duties of welders are commonly known and understood.

(d) It is the work that is determinative and not the manner of performance (whether it be oxygen-acetylene or electric welding).

(e) The note in Appendix A, referred to above, recognizes the fact that employes within the Bridge and Structures Department, part of the Maintenance of Way Department, use the electric torch.

(f) All welding of frogs and switches in place belongs to Maintenance of Way Welders.

(g) The agreement includes welders and states no exceptions for electric welding.

We concur in the Organization's contentions (a), (e) and (g).

The Carrier's contentions may be summarized as follows:

(a) Electric welding of manganese frogs and switches has never been done by Maintenance of Way employes.

(b) This work has heretofore been done by Mechanical Department employes after Maintenance of Way employes took up the frogs and switches from the track and took them to the Mechanical Department.

(c) This was the practice at the time the current agreement was negotiated.

(d) Maintenance of Way welders were qualified only in oxygen-acetylene welding, had no experience in use of the electric torch and did not possess the necessary skills to perform this work (See awards No. 3206, 4702, 5304 and 5151).

(e) Admittedly some Bridge and Building employes within the Maintenance of Way group, not welders here involved, had done some cutting or rough work with an electric torch.

(f) Assigning the work to Maintenance of Way welders would have required their being given special training and the purchase of portable electric welding equipment not possessed by the Railroad.

(g) The special training (See award No. 6256) and purchase of equipment by a very small Railroad (167 miles) with a very limited amount of such welding to be done would not have been justified. (See award 5151)

We concur in carrier's contentions (a) through (g).

We now have here a change in the method. We now have welding work to be done on track in place by welders. On first sight it logically appears that it should accrue to Maintenance of Way welders. This should follow if there are no modifying factors involved. To leave the matter there we would have to hold that the mere listing of the word "welders" in the Ap-

pendix of the Maintenance of Way agreement gives the term an all inclusive meaning regardless of practice on the property and recent changes in methods and regardless of the fact that the experience of Maintenance of Way welders was limited to a different kind of welding and regardless of the fact that new tools are now involved.

We cannot attach to the mere listing of the word "welders" the sweeping significance contended for by the organization and close our eyes to other pertinent facts.

We hold that the interpretation contended for by the Organization reads too much into this very briefly worded contract that isn't there.

We hold that under the facts and circumstances of this case, and particularly the facts that complainants do not possess the necessary skills for this kind of electric welding and that this particular kind of welding has been done by others and has never been theirs in the past, that the position of the complainants cannot be supported. (See award 6159 by Jasper in accord and No. 5041 by Carter to the contrary.)

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 Employes involved in this dispute are respectively Carrier and Employes 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 for reasons set forth above the position of the complainants cannot be sustained.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1957.