

Award No. 8153  
Docket No. MW-7842

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Norris C. Bakke, Referee

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**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) Carrier violated the Agreement when it assigned Track Department Employees to perform the usual and customary work of Maintenance of Way Welders on September 29; October 13 and 18; December 7, 9, 14, 22, 1954.

(2) That Maintenance of Way Welder Theodore Anderson be allowed 8 hours pay for each of the dates Track Forces performed Maintenance of Way Welder's work.

**EMPLOYES' STATEMENT OF FACTS:** The claimant, Mr. Theodore Anderson was employed in and holds seniority in the Maintenance of Way Welding Sub-department as follows: Welder Laborer, January 23, 1948; Grinder, July 10, 1948; Welder, September 1, 1950.

On September 29, October 13 and 18, December 7, 9, 14 and 22, 1954, the Carrier assigned an employe holding seniority in the Track Sub-department to perform the usual and customary work of Maintenance of Way Welders; specifically the work consisted of using a welder's acetylene torch to cut track bolts, rails, etc. in connection with track repair work in the Carrier's Twin City Terminals.

On the aforementioned dates, the claimant was working in the above referred to terminals, within sight of the point where the involved work was being performed.

Track employes and Welders hold seniority in separate and distinct Sub-departments.

The agreement violation was protested and the instant claim was filed in behalf of the claimant.

The Claim was declined as well as all subsequent appeals.

The carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Organization's theory of this case is that the acetylene torch used by certain track men in the dismantling and removing rail from old street car crossings is a "welding device" within the meaning of Rule 46 (h) which reads as follows:

"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."

That the meaning of this rule is clear to the Organization appears from a letter which the General Chairman wrote the Carrier on December 13, 1954 which says in part, "If we were to agree with you that trackmen, bridgemen and others would have the right to use the torch for cutting purposes then eventually they will learn to do welding and to that we will not agree."

Sometimes, no doubt, there is no physical or technical difference between a torch used for welding and one used only for cutting, and they could be used for both purposes, but under the facts in this case the torch used did not become a "welding device" because it was not used to do any of the things enumerated in Rule 46 (h) supra.

Employees rely particularly on a letter, Mr. Jackson's Circular Letter No. 123 dated February 14, 1950, subject—Use of Cutting Torch on Rails.

Employees in the welding department have, since its start, been forbidden to torch out bolt holes in the web of rails and have been cautioned continually regarding its use on rail in any way. Holes must be drilled in rail. Our employees who are required to make replacement rails for crossings or frogs in the field have no other means of cutting rail to shape except with the cutting torch. The finish out must always be made with a grinder to remove slag from the torch cut and provide a smooth cut surface of correct shape.

The use of a cutting torch to straighten up a slightly misplaced hole in a replacement rail creates a condition as dangerous as cutting the entire hole. The rail will eventually break and may result in a derailment.

The purpose of this letter is to impress the younger men in the department with the importance of this subject as well as refresh the memory of the senior employees.

The Employees make this comment concerning the above letter:

"Please note from the above quoted instructions that the welder's cutting torches have been utilized by Welders in the performance of their work since the inauguration of such work on this property."

Our comment on the letter is this: It is directed to the employees in the welding department, not to the track workers. It tells how cutting torches (does not say welders' torches) are not to be used by welders on rails in use, because of the possible damage to the rail. There is no suggestion that a cutting torch should not be used by track men on a dismantling job. It was directed at a misuse by the welders of a cutting torch.

Employees admit of the past practice by the Carrier in permitting others than welders to use "such a tool", but rely on those awards which hold that continued violation cannot change the rule.

The fact is that the practice complained of here has been going on for at least 24 years, and this claim is the first to be filed. The rule relied on here was adopted in 1940 and so far as the record shows, the Organization made no effort to have the rule changed to accomplish the result sought here.

Past practice may be shown to indicate an agreed-upon interpretation and that the use of the torch in question did not belong exclusively to the welders.

It seems to us that this and similar disputes could be avoided by keeping in mind the simple definition of welding "To unite metallic parts by (1) heating the surfaces to be joined and then allowing the metals to flow together"—Webster's New Collegiate Dictionary, 1949 Ed., Page 971.

We are not overlooking the recent Award 7958 which involved the same parties and the same rule but note that was a dispute between two groups as to which was entitled to do welding on a bridge, and since Rule 46 (h) specifically includes bridge welding, it is not controlling in the instant case.

Our conclusion is that no violation of the Agreement was shown and the claim should be denied.

**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 did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.