

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Section Laborers J. E. Riley and A. H. Love at the Electric Welder (Rail-end) Helper's rate of pay for services performed while assisting Electric Welder L. A. Poe on various dates in April and May, 1955;

(2) Claimants J. E. Riley and A. H. Love each be allowed the difference between what they were paid at the Section Laborer's rate of pay and what they should have been paid at the Welder Helper's rate while assisting Electric Welder L. A. Poe during April and May, 1955.

Note: 128 hours x 14½c for claimant Riley.
64 hours x 14½c for claimant Love.

EMPLOYES' STATEMENT OF FACTS: The claimants, Messrs. John E. Riley and H. A. Love, were regularly assigned to the position of section laborer at Langdon and Watson, Missouri, respectively.

On April 14, 15, 19, 20, 21, 22, 26, 27, 28, and on May 2, 3, 4, 5, 6, 9 and 10, 1955, Claimant Riley was assigned to and performed the duties of an Electric Welder Helper (Rail-end) in assisting Electric Welder L. A. Poe in the performance of electric welder's work. For this service, Mr. Riley was paid therefor at the section laborer's rate of pay.

Similarly, on May 11, 12, 13, 16, 17, 18, 19 and 20, 1955, Claimant Love was assigned to and performed the duties of an Electric Welder Helper (Rail-end) in assisting this very same Electric Welder in the performance of electric welder's work. While so assigned Claimant Love was paid at the section laborer's rate of pay.

the August 21, 1954 Agreement, consequently the Board lacks jurisdiction to decide the merits thereof.

2. Claimants performed only the usual section laborer work that is always performed by section laborers in conjunction with track welding.

3. Claimants were properly compensated at section laborer rate for the work performed.

In the light of all of the facts and circumstances, there would seem to be no alternative other than to deny the claim in its entirety.

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The Carrier affirmatively states that all evidence herein and herewith submitted has been previously submitted to the Employees.

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(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner maintains that Claimants should have received the Welder Helpers', and not Section Laborers', rate of pay for services performed on certain specific days in April and May 1955. It is undisputed that on those days, Claimants, pursuant to the instructions of their foremen worked with an Electric Welder named L. A. Poe while he was performing welding duties. The theory of the claim is that Claimants were doing Welder Helper work at those times and are entitled to the pay rate of that position.

The record contains a statement by Mr. Poe specifically setting forth the nature of Claimants' work on the days in question and affirming that they satisfactorily performed the work of Welder Helpers at those times. We regard this statement as particularly compelling and entitled to great weight. Mr. Poe, a Senior Electric Welder with considerable experience in his field, directly handled the welding operations involving the Claimants and is fully qualified to know what the work of an assistant welder entails. There is no showing that his statement was the result of fraud or improper collusion or that the supervisory employes who have commented on the situation were actually present at the time the work was performed.

While there is some question as to whether or not Claimants were properly assigned to welder helper work, we are satisfied that the record viewed in its entirety, particularly in the light of Poe's statement, requires an affirmative award. From Claimants' standpoint, they were assigned to the work under consideration by competent managerial authority, their foremen; they did the work for more than four hours on each of the claim dates and Rule 45 is controlling under the circumstances.

As Carrier points out in its original Submission, it does appear that Petitioner neglected to comply with the time limit requirements of Article V, Section 1(a) of the August 21, 1954 National Agreement. The claims are continuing ones and only April 14 and 15, 1955, the first two days of Claimant Riley's claim, are affected by this point. We perceive no valid reason for considering other objections that were first voiced by Carrier Member at the panel argument before the Referee.

The claims will accordingly be sustained for the work performed on and subsequent to April 18, 1955.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June, 1961.