

**Award No. 10024**  
**Docket No. MW-8387**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John Day Larkin, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**ATLANTA JOINT TERMINALS**

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

(1) The Carrier violated the effective Agreement on June 15 and 22, 1955, when it permitted and/or required employees of the Track Sub-Department to perform the usual and customary work of Welding Sub-Department employees by the use of an acetylene torch in the cutting of rails and track bolts.

(2) Welder J. V. Eidson and Welder Helper J. Tolbert each be allowed two days' pay at their respective straight time rates account of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATMENT OF FACTS:** Maintenance of Way Welding Sub-Department employees have historically and traditionally performed work necessary in the cutting and heating of rails, and track bolts on this Carrier's property.

On June 15 and 22, 1955, the Carrier permitted and/or required Section Foreman C. T. Payne to use an acetylene torch for cutting and heating rails; and cutting track bolts and rails, respectively.

Claim as set forth herein was filed; the Carrier declining the claim.

The Agreement in effect between the two parties to this dispute dated December 16, 1944, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

**EMPLOYES' POSITION:** Under Rule 9 of the effective Agreement employees establish seniority rights in either Rank No. 1 or Rank No. 2 of their respective sub-department as of the date their pay starts and as provided in the rule. The pertinent portions of Rule 9 read as follows:

**"RULE 9 — SENIORITY**

(a) The establishment of seniority above the rank of laborer is contingent upon the performance of actual service of sixty (60) days within a period not to exceed six (6) months. Upon completion of his sixty (60) days' work, the employee will be given seniority dating in

& West Point Rail Road and Georgia Railroad are under common management. There are separate agreements with Petitioners, all executed simultaneously and the rules in same are substantially the same except for certain minor items peculiar to the individual properties.

In 1950 certain extra and section gangs on Atlanta & West Point Rail Road were furnished cutting torches for cutting rails and bolts. Early in 1951 the following claim was progressed to Carrier's Director of Personnel:

"1. E. B. Pippin, Railwelder, 8 hours at straight time rate of pay account Extra Gang Foreman and Section Laborer on December 18, 1950, using a cutting torch to cut rails.

2. Joe Cumbie for 4 hours at straight time account a B&B employee using a cutting torch on December 18 to cut a rail.

3. Joe Cumbie for 16 hours pay account B&B employee cutting rails at a number of points on Western Railway of Alabama on December 13, 1950."

These claims were declined on March 19, 1951, letter of declination reading in part, as follows:

"As I have previously advised you, there is no classification of work rule in your agreement and the use of a cutting torch is delegated to no particular craft. It is our view that anyone in any sub-department of the Roadway Department can use a torch without violating the rights of other sub-departments.

Your claims are declined."

Nothing further was heard and it can only be assumed that the organization acquiesced in our views.

The West Point case above referred to is similar in all respects to the case now before you. The Petitioners are undertaking to get you, thru the medium of a favorable award, to grant them a classification of work rule which will give to welders the exclusive use of a cutting torch.

We have shown above that it was entirely proper to furnish section foreman a cutting torch; that the scope rule of the agreement was not violated and the agreement does not give welders the exclusive use of a cutting torch; further, that there was no loss of employment by the transaction. The claim is utterly without merit and we respectfully request it be declined.

All data contained herein has been made available to Petitioners.

**OPINION OF BOARD:** This Carrier's facilities consist of approximately thirty-five miles of track and four large warehouses. With this it performs terminal and agency work for the Atlanta and West Point Railroad and the Georgia Railroad, both of which are under common management and committee representation, but with separate agreements. Carrier also performs terminal service for the Louisville and Nashville Railroad.

At the time this claim arose the Maintenance of Way forces consisted of one track gang, one bridge and building gang and one welder and helper. In addition to rail welding, the welding gang works on steel underpasses and elevators in the buildings.

Prior to June 15, 1955, in the event it became necessary to have a rail or bolt cut with a cutting torch, the welder or his helper was called from whatever job he might be doing to do the cutting. This at times required the welder to make a two or three mile trip for a minor cutting job.

On May 27, 1955, Carrier's Supervisor of Track, W. E. Pitts, Jr., addressed the following communication to Foreman C. T. Payne of the Track Sub-Department:

"Reference to our conversation a few days past about getting a cutting torch outfit for your gang so you can cut off rusty bolts and make closing when laying rail on side tracks.

"This outfit has been ordered for you and will be delivered to you in the near future. You will get your acetylene and oxygen at storeroom just as welding gang does.

"The welding gang is behind in their work and need to be building up joints and switch points eight hours every day. They do not have time to spend the day with your gang just to cut off a few bolts and cut two or three rails. Of course, if you have a welding job to be done, they must be called to do it.

"I will send you a supply of forms to be sent in at end of each month showing amount of acetylene and oxygen on hand on your gang."

The present grievance was filed on behalf of the welder and his helper following the first use of the cutting torch by the Track Sub-Department employees on June 15 and 22, 1955. It is not denied by Carrier that, for the past eleven or twelve years prior to this claim, the welder or his helper had performed the type of work here in question, even though it was not welding, as such. During this time it had not been performed by the Track Sub-Department employees.

We are also aware of the many rulings of this Board which have held that, when there is no so-called classification of work rule, the work that is reserved to the employees covered is that which is historically and customarily performed by that group. Award 7862.

However, there are also many awards which recognize the duty and responsibility of Carriers to promote the efficiency of their operations, in so far as the assignment of work is not specifically restricted by agreements. Where work is incidental and secondary to a primary objective, as the cutting of bolts and rails is incidental and closely related to the work of track gangs, such work may be assigned to the Track Sub-Department employees without jeopardizing the seniority of those in the welder classification. It is to be noted that Carrier's instructions to the Foreman of the Track Sub-Department carefully specified that all welding must be performed by the welders. As we stated in Award 6879:

"Work that is incidental and secondary to a primary objective . . . usually falls in a twilight zone where no craft can lay claim to the work and exclude all others."

Where the cutting to be performed is incidental to track work, we find no language in either the Scope Rule or the seniority provisions which we can invoke to restrain the Carrier from supplying the Track Gang with a cutting torch to do work incidental to the removal of rails.

**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 not violated.

**AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1961.