

Award No. 10125
Docket No. MW-8696

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement effective between the parties hereto when it used Maintenance of Way welding forces employed by and holding seniority rights with the Gulf Coast Lines Railroad instead of Welding forces employed by and holding seniority rights with the Carrier party to this dispute to perform work of cutting and clearing wreckage, rail etc. from track and right-of-way beginning on May 20, 1955 and continuing through May 26, 1955;

(2) Welder J. O. Turner and Welder Helper C. E. Elliot each be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in part one (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Welders J. O. Turner and Welder Helper C. E. Elliot, with assigned headquarters at Alexandria, Louisiana, are regularly employed and hold seniority on the Little Rock — Louisiana Division (which includes the Lake Charles sub-division) of the Missouri Pacific Railroad.

Because of a derailment which occurred near Oberlin, Louisiana, Lake Charles sub-division, which is within the seniority district of the aforesaid two employees, the Carrier determined that welding forces would be needed to perform cutting, welding and other related work in connection with clearing of the tracks and right-of-way.

In lieu of calling and using the aforesaid two employees, the Carrier elected to use Maintenance of Way Welder forces from the Gulf Coast Lines Railroad whose headquarters are more distant from the point of derailment than are the headquarters of the claimant employees. The Claimants' tool car was in Alexandria and spotted on a track very near to the very wrecker that was brought to and used at this derailment.

The use of welding forces from the Gulf Coast Lines Railroad to perform service on the Missouri Pacific Railroad when welding forces from the

their claims are based. There is no contract between the parties dealing with such work. Its performance by whomsoever could not affect the rights of these claimants under their Agreement. At the time of the occurrence they were engaged in work which was covered by their Agreement. They lost nothing. There is no Agreement requirement or merit basis to justify the allowance of the premium payments claimed for work which they did not perform.

Without prejudice to or detracting in any degree from the position of the Carrier as outlined supra we desire to enter protest against any punitive payments in any eventuality in the disposition of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to a derailment near Oberlin, Louisiana on May 20, 1955, the Carrier assigned a welder and helper to the work of cutting up derailed cars to assist in clearing up the wreckage. A few track rails were cut in connection with the operation which was carried out beginning May 20 and continuing through May 26.

The locale of the derailment and cleaning up operation was on the Lake Charles sub-division of the Little Rock-Louisiana Division of the Missouri Pacific Railroad. This claim is made by the System Committee of the Brotherhood on behalf of a welder and helper holding seniority as such in the Maintenance of Way Department on said Division. The Carrier used a welder and helper from the Maintenance of Way forces of the Gulf Coast Lines Railroad, neither of whom held seniority on the Division involved.

The employees maintain that the Carrier's action violated the seniority rights of the claimants contrary to the provisions of the effective agreement between the Missouri Pacific Railroad Company and its employees represented by the Brotherhood of Maintenance of Way Employees. In support of its position the Brotherhood relies on our Award No. 6306.

The Carrier maintains that the work of cutting cars did not belong to Maintenance of Way employees under the Agreement, and consequently was not on the claimant's seniority district. Work of the nature involved is normally performed by Maintenance of Equipment forces.

In the execution of the work involved, the Carrier was not required to call welders of the Maintenance of Way Department. However, when it elected to use Maintenance of Way Welders it was under a contractual obligation to respect the seniority rights of the claimants in this case. This sound principle was clearly stated and applied in Award 6306 to which doctrine we adhere. The claimants held seniority as Maintenance of Way welders on the Division in question, and the welders from the Gulf Coast Lines Railroad who were used did not. We are therefore required to hold that the claimant's seniority rights were violated.

Claimants seek time and a half rate for the time lost. Pay for time lost is the pro rata rate under many awards of this Division. See Awards 7207 and 9393. The instant claim is sustained at pro rata rate.

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 the Agreement was violated.

AWARD

Claim sustained. Payment is required at pro rata rate for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1961.