

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 Laborer E. W. Law at the Welder Helper's rate while assigned to and filling a position of Welder Helper from April 25, to May 6, 1955.

(2) Claimant E. W. Law be allowed the difference between what he was paid at the Section Laborer's rate and what he should have been paid at the Welder Helper's rate from April 25, to May 6, 1955.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. E. W. Law was regularly assigned to the position of Section Laborer on Section No. 7, headquartered at Litchfield, Illinois.

During April and May of 1955, one of the Carrier's Electric Welding Gangs, consisting of one Head Welder, one Electric Welder and one Electric Welder Helper, was performing electric welder's work in the vicinity of Litchfield.

During the period from April 25, to May 6, 1955, both dates inclusive, the Head Welder was accorded a paid vacation. The welder was assigned to fill the head welder's position and the Welder Helper was assigned to fill the Welder's position while the Head Welder was on vacation.

Similarly, the Claimant was assigned to and did fill the position of welder helper on this gang during the aforementioned period.

The rate of pay paid a welder helper is greater than the rate of pay paid a section laborer.

Claim was filed in behalf of the claimant requesting that he be allowed the difference between what he was paid at the Section Laborer's rate and what he should have been paid at the Welder Helper's rate for services rendered as a welder helper from April 25 to May 6, 1955.

The claimant in this case was performing exactly the same section laborer work that he and hundreds of other section laborers perform whenever a welding gang is performing track welding on their sections. He was working with higher rated employees on the work to be performed, and as such, was not subject to Rule 45. He was not required to perform welder helper's duties, and he was not assigned to a welder helper's position, nor did he fill a welder helper's position.

In the light of all of the clear facts and circumstances outlined above, there can be no decision other than denial of the claim in its entirety.

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

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(Exhibits not reproduced.)

OPINION OF BOARD: The original claim on the property was based on the fact that the claimant, a section laborer, had performed welder helpers' duties during the period of April 25 to May 6, 1955, and on the fact that Ratio Rule 52 was not complied with. The initial submission to this Board did not mention the Ratio Rule. It was at that time alleged that claimant during the aforementioned dates was "assigned to and filling a position of Welder Helper."

We recognize that a claim must be properly presented to the Carrier on the property. A claim not so presented below cannot be presented here for the first time. An examination of the record in this case, however, convinces us that the original claim on the property was sufficient in scope and in time, location and date to be within the framework of the original submission to this Board. See Award 7771. We do not believe the Carrier can be heard to plead surprise!

The claim, however, must be denied on the merits. There is no competent evidence to support the claim for compensation at the Welder Helpers' rate from April 25 to May 6, 1955. Organization relies on Award 9965. In that award there was strong and clear evidence to support the claim. The evidence in the instant case is in no way comparable. Here, the organization has failed to meet its burden of proof. Awards 7793, 9552, 9788, 10048.

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 Employee involved in this dispute are respectively Carrier and Employee 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 21st day of November, 1961.