

Award No. 14015
Docket No. MW-13790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, on September 5, 1961, it assigned or otherwise permitted two (2) Welding Sub-department employes to perform Track Sub-department work while Track Sub-department employes L. C. Darden and C. Williams were cut off and available and willing to perform the subject work.

(2) Cut-off Track Sub-department Laborers L. C. Darden and C. Williams each be allowed five (5) hours' pay at their straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation in this case was fully and accurately set forth in a letter reading:

"January 2, 1962
1-12

Mr. W. S. Scholl
Director of Personnel
L&N Railroad Company
Louisville, Kentucky

Dear Sir:

I am appealing to you from Mr. Clark's decision of December 19, 1961, in claim on behalf of L. C. Darden and C. Williams, Track Department laborers, Evansville Division, that they each be paid for five hours at the straight time rate of track laborer account of M. Boling, Welder, and R. Hudson, Welder Helper, being assigned to tighten bolts and cut weeds on September 5, 1961.

Mr. Clark points out that Welder Boling's equipment was being moved from one location to another during the time involved here and makes the observation that he believes I will agree that inasmuch as the welder and welder helper were under pay of the company, the company was entitled to some service from them.

Carrier submits that there was nothing unusual in requiring the welders to perform such service, and feels that the dispute is utterly ridiculous. Actually, employes apparently recognize that there is no merit, for in handling claim on the property, the General Chairman stated, in part:

"I will not argue the point Mr. Clark raises, because I certainly agree that if Mr. Boling and Mr. Hudson were being paid, they should have performed some service."

A feeble effort was then made to qualify the statement by saying that it should not have been performed in the Track Department and thus deny work to Track Sub-department employes L. C. Darden and C. W. Williams, who were cut off. Messrs. Darden and Williams were not deprived of any compensation whatsoever. This is simply a case of where the employes are without justification attempting to penalize the carrier. The action of the welder and his helper had no adverse effect on earnings of the claimants, as neither would have been called, and neither did it deprive members of any gang of overtime. The only difference is that at some later date a section gang, while working in that vicinity, would have cut the weeds and tightened the bolts during their regular tour of duty.

The organization has not contended that additional men were needed on the section gang, but the claim is on behalf of two furloughed employes, requesting that each be allowed five hours' pay at the straight time rate. It is, therefore, obvious that the claim is in fact a penalty claim, but there are no provisions in the maintenance of way agreement that provide for such a penalty. Furthermore, this Division has held, in numerous awards, that penalties cannot be awarded unless the agreement so provides.

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OPINION OF BOARD: The present claim is based on the contention that Carrier violated the Agreement when it permitted two Welding Sub-department employes to perform Track Sub-department work while Track employes were furloughed and available for work.

It is undisputed that the two welders were used to tighten bolts and cut weeds while they were waiting five hours for the departure of a train moving their equipment to another location. We are satisfied that the duties in controversy belong to Track employes, and that Claimants were furloughed trackmen available for work. It is equally clear that Rules 3, 5 and 6 group welders and trackmen in separate sub-departments and with separate seniority lists. While, under Rule 6 (f), welders may also possess seniority in other departments, they could not be used for track work under the circumstances of the present case.

Carrier's explanation that the two welders were used to perform the work because they were under pay at the time in question and standing around with nothing to do has a certain amount of appeal, practically speaking, but is scarcely justification for trespassing on Track Sub-department rights.

Carrier has not presented a valid defense, and since we are not free to consider the equities of the situation, the Agreement must be enforced and the claim sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1965.