



Award No. 14833
Docket No. MW-13287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned electric welding work on track department facilities to forces holding no seniority within the scope of the Carrier's Agreement with the Brotherhood of Maintenance of Way Employees.

(2) The Carrier further violated the agreement when it summarily refused to negotiate rates of pay for electric welder foremen, welders and helpers.

(3) (a) The Carrier be directed and required to discontinue the violation referred to in Part (2) of this claim and

(b) That Welder W. J. Connor and Welder Helper A. B. Moody each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier employs Maintenance of Way Welding Gangs to perform various welding work on its property.

Welder Foremen, Welders, Grinders, and Welder Helpers are classes of Employees specifically embraced within the Agreement and have regularly performed track welding work to the Carrier's satisfaction.

The Carrier contracted with Teleweld, Inc., for the performance of certain items of track welding work, without benefit of negotiation or approval of the Employees' representatives. The employees of Teleweld, Inc., do not hold any seniority under the effective Agreement.

The work was started by the contractor's forces on or about January 9, 1961.

exclusively in the operation of Coal Chutes; Plumbers while engaged in Maintenance of Way and Structures service; Water Service and Motor Car Repairmen on Alabama, Tennessee and Louisiana Divisions.

NOTE: If and when electric welding is substituted for acetylene welding, then electric welder foremen, welders and helpers will be understood to be included within this scope while in Maintenance of Way Service."

Particular attention is called to the Note appearing as a part of the Scope Rule. The same Note appears in the Scope Rule of the Agreement effective June 1, 1942.

The practice of having manganese steel repaired by electric welding by the Teleweld, Inc., and other electric welding contractors, had prevailed for five years prior to the agreement effective June 1, 1942.

At the present time the Carrier has eight (8) welding gangs on its Southern Region, which is approximately the same number of gangs since 1937. These welders perform the same type of welding, i.e., acetylene welding, that they have performed for the past 25 years. Electric welding has not been substituted for acetylene welding. Acetylene welding cannot be used with any degree of satisfactory results on manganese steel. The amount of welding performed on manganese steel by Teleweld, Inc., is a very small part of the total welding performed on the Carrier's Southern Region by its acetylene welders. Welders under the Maintenance of Way Agreement have never performed electric welding and are not qualified to perform such work.

OPINION OF BOARD: The instant claim is filed to challenge the Carrier's practice of contracting out certain electrical track welding involving manganese repairs.

Organization contends that subcontracting of this work is in violation of the parties' Agreement, which, in a note to the Scope Rule, states:

"If and when electric welding is substituted for acetylene welding, then electric welder foremen, welders and helpers will be understood to be included within this scope while in Maintenance of Way Service."

The Organization asserts that the Carrier has substituted electric welding for acetylene welding, that its own welders had done electric welding and were qualified to do the disputed work, and that therefore this work should be reserved to Organization welders under the terms of the parties' Scope Rule.

The Carrier denies liability. It argues that this work has continually been contracted out without Organization challenge, even during negotiations; that it lacks the necessary equipment and qualified employes to do this specialized welding and that there has never been a substitution of electric welding for acetylene welding as is required by the Note to the Scope Rule for Organization to prevail.

Organization has not met the burden of proving that the electric welding work in dispute is embraced within the Scope of the parties Agreement. The Note to the Scope Rule on which it relies, requires a "substitution" of electric

for acetylene welding, for the former to be reserved to Maintenance of Way employes. The evidence is that there has not been any such substitution: Acetylene welding continues to constitute the great bulk of welding work done on the property. There is no evidence that electric welding has increased in amount, or that it has replaced acetylene welding to any substantial degree. In the absence of proof of such replacement, we must find that the Organization's claim of jurisdiction over this subcontracted work lacks merit.

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 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 12th day of October 1966.