



**Award No. 16874**

**Docket No. MW-17566**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Robert A. Franden, 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, beginning on January 9, 1967, it assigned the work of welding track frogs to forces outside the scope of the Agreement. (System file: E-201-6/1-31.)

(2) Welder J. D. Fortney and Welder Helper H. L. Bates 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:** Claimants J. D. Fortney and H. L. Bates have established and hold seniority within their respective classes in the Welding Subdepartment.

Beginning on January 9, 1967, the Carrier assigned the work of building up worn track frogs by the welding process to Southern Track Welding Company, whose employees hold no seniority within the scope of this Agreement. Some of the frogs were shipped to and welded at the welding company's shop while others were welded on line of road. The on-line of road welding was performed by Mr. Charlie Harbin, a welder employed by Southern Track Welding Company, assigned by a Carrier employee who has no seniority within the Welding Subdepartment, on January 30, 31, February 1, 2, 3, 6, 7 and 8, 1967.

The claimants were available, fully qualified and properly equipped to perform this work if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** On certain portions of its W&A Division Carrier found it necessary to make repairs to the RBM frogs. The work consisted of repairs to the manganese casting in the center of the frogs, and could only be done by electric arc welding for manganese is a metal that cannot be repaired by any other process.

The repair work was directly related to the safety of Carrier's operation and for that reason could not be further postponed. A canvass was made of Carrier's entire system to see if there were electric welders available, but none could be found. Carrier, therefore, had the work performed by a contractor.

Employees claimed that the agreement was violated, and filed a claim in behalf of J. D. Fortney, Electric Welder, and H. L. Bates, Electric Welder Helper. Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is shown by the attached exhibits.

There is on file with this Board a copy of the current working rules agreement, and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts in this case are not in dispute. Beginning on January 9, 1967, the Carrier assigned the work of building up worn track frogs by the welding process to Southern Track Welding Company, whose employees hold no seniority within the scope of the Agreement between the parties hereto. Some of the frogs were shipped to the welding company's shop to be worked on at that point while others were welded on line of road. One of the Carrier's employees worked on the welding on line of road but did not hold seniority in the welding sub-department.

The employees who are the Claimant's herein hold seniority in the welding sub-department.

The Agreement between the parties hereto contains one rule 38(b) which reads as follows:

"38(b) Maintenance of way welders will be used to do all welding that is done on materials or parts of tracks, bridges, or buildings. It is intended that this rule will apply only to welding that can be performed on line of road or in maintenance of way shops, and is not applicable to welding requiring the service of other departments.

Maintenance of way welders will also do all cutting, heating, and burning on materials or parts of tracks, bridges and buildings, except that employees of the Bridge and Building Subdepartment will be allowed to perform burning or cutting that is directly in connection with work properly coming within their jurisdiction."

The Carrier has defended its actions in contracting out the work on the grounds that Rule 2(g) of the Agreement permitted it to do so. Rule 2(f) reads as follows:

"2(f) The railroad company may contract work when it does not have adequate equipment laid up and forces laid off, sufficient both in number and skill, with which the work may be done."

This Board has held that Rule 38 is a special rule in which all exceptions to said rule are contained therein, and that Rule 2(f) (at that time Rule 2(h)) is not an exception to Rule 38(b). See Awards 12632 (Seff) and Award 13224 (McGovern). We are not persuaded that the interpretation placed on the Agreement by those awards is palpably erroneous and are therefor bound by the precedents set down therein.

As Rule 38(b) has precedence over Rule 2(f), and as the Carrier has not set up as a defense an exception contained in the controlling Rule 38(b), we find the claims to be with merit and sustain same.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 24th day of January 1969.