

 Award Number 17943

Docket Number MW-18313

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

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

- (1) The Carrier violated the agreement when, on February 16, 1968, it used a track sub-department employee to assist Welder J. J. White in the performance of overtime service instead of calling and using Welder Helper Felix Rocha. (System file MofW 152-675).
- (2) The Carrier be required to allow Felix Rocha 5 1/2 hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On February 16, 1968, Track Welder Jesse J. White was called at 4:00 p.m. by the Roadmaster to perform track welding work in connection with changing a broken rail, completing his assignment at 9:30 P.M. The Roadmaster instructed Welder White not to call his regularly assigned helper (Claimant F. Rocha) but to use a member of the extra gang for the required assistance. A track department gang foreman assisted Welder White as may be readily ascertained from the following quoted letter:

"March 12, 1968

Mr. C. L. Ashley  
General Chairman  
San Francisco, California  
Dear Sir & Brother:

In reference to your letter of February 27, 1968, addressed to Mr. Felix D. Rocha, Welders Helper, Gang 0-25, Gridley, California, Marysville District, regarding not being called on February 16, 1968 to help change out a broken rail at M.P. 202.5.

Referring to your last paragraph of your letter of the above date, there was welding performed on this broken rail, as the receiving rail was battered down and had to be welded up and the Foreman on the Extra Gang, at Chico, did the helpers work while I welded the rail end.

Therefore, I do think the helper Mr. Rocha should have been called.

Sincerely and fraternally yours,  
/s/ JESSE J. WHITE  
Jesse J. White

JJW:pc'

By letter dated April 15, 1968 (Carrier's Exhibit "C"), Petitioner's General Chairman gave notice that the claim would be appealed.

By letter dated April 18, 1968 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated May 8, 1968 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** On February 16, 1968, Track Welder White was called at 4:00 P.M. by the Roadmaster to perform track welding work in connection with changing a broken rail. The Roadmaster instructed Welder White not to call his regularly assigned helper but to use a member of the Extra Gang for assistance. A Track Department Extra Gang Foreman assisted Welder White in the performance of the welding work. Claimant, Welder helper Rocha, seeks 5 1/2 hours' pay at his time and a half rate.

Carrier offers as a defense the fact that the Organization did not specifically describe and detail the work which was performed by the Foreman on the Extra Gang. We have carefully considered this defense, but do not consider it persuasive when confronted by the statement of the Welder himself that the Foreman did in fact do welder helpers' work. This, in our judgement, is sufficient. Certainly the Welder himself knows what constitutes and what does not constitute Welder helpers' work. Although we dismiss this as a defense on Carrier's part, we are nevertheless forced to agree with Carrier that the Scope Rule involved is general in nature, and that Rules 2 (Sub-Departments) and 5 (Seniority) have indeed no application unless the Organization can show that these rules give claimant an exclusive right to perform the work in question. There is no evidence in this record to substantiate such a position. We will deny the claim.

**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 not violated.

#### A W A R D

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 May 1970.