

Award Number 17982

Docket Number MW-18471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

KANSAS CITY TERMINAL RAILWAY COMPANY

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

- (1) The Carrier violated the Agreement when it assigned B&B employees instead of welders and welder helpers to perform work with a cutting torch at the Grand Avenue Viaduct on April 4, 5, 9, 11, 12, 15, 16, 17 and 18, 1968. (System files MW-5.68.23/KCT-0-243, MW-6.68.23/KCT-0-244 and MW-7.68.23/KCT-0-245).
- (2) Welders K. T. Bouyear, H. Duffer, C. B. Carpenter, H. S. Rice and Welder Helpers Jose Garcia, Carl Carver, M. Briseno and Clarence Owens each be allowed pay at their respective straight time rate of pay for an equal proportionate share of the total number of man hours expended by B&B forces in the performance of the work referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants have established and hold seniority within Group 3 of the track department and, during the period involved here, were regularly assigned as welders and welder helpers.

On the dates set forth within the Statement of Claim, the Carrier assigned a carpenter (B&B mechanic) who had established seniority in Group 5 of the bridge and building department (but who had no seniority whatever within Group 3 of the track department) to operate an acetylene cutting torch for the purpose of cutting reinforcing steel and steel bridge beams at the Grand Avenue Viaduct.

The character of work reserved to the aforementioned seniority groups is set forth within Rule 2 which, insofar as it is pertinent hereto, reads:

"CLASSIFICATION OF WORK

GROUP 3: Work connected with the operation of gas or electric welding devices, or cutting torches, as required by the various departments of the Maintenance of Way Department and repairs to Maintenance of Way motor cars, machines and equipment, shall be classified as Welder's work. Helpers shall perform work generally recognized as Helper's work and will assist Welders in the performance of their work. Helpers will be given opportunity to learn work of the Welders.

"BRIDGE AND BUILDING DEPARTMENT

GROUP 5: Except as may be covered by the Union Station Main-tainers' Agreement, the construction, repairing, maintenance or dis-mantling of buildings or other structures, the erection of fencing, gates, right-of-way monuments and signs, the installation of wood or concrete crossings, walks and platforms shall be classified as Bridge and Building work."

The Employees contended that the assignment of a carpenter to perform work of a character reserved to welders and welder helpers was in violation of Rule 2.

The claimants were available and would have willingly performed 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 April 1, 1961, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: During April 1968, The Bridge and Building forces were assigned to break up and remove a deteriorated cement sidewalk on the Grand Avenue Viaduct over Kansas City Terminal Rail-way tracks. In order to remove the old 1/2" to 1" reinforcing steel rods em-bedded in the broken up concrete, a B&B employe used a cutting torch to cut the rods loose. Rivets in several steel beams were also cut so the beams could be replaced. No welding was performed in connection with this job.

April 16, 1968 was the last day the cutting torch was used and the total time the torch was used during the seven claim dates from April 4 through 16, 1968, amounted to but eight hours.

OPINION OF BOARD: During April 1968, Carrier's B&B forces were as-signed to break up and remove a deteriorated cement sidewalk on the Grand Avenue Viaduct over Kansas City Terminal Railway tracks. In order to re-move the old 1/2" to 1" reinforcing steel rods embedded in the broken up con-crete a B&B employe used a cutting torch.

There is no dispute that the employe who used the cutting torch was not a Welder or Welders Helper. Further, it is undisputed that Rule 1—Scope, Track Department Group 3; and, Rule 2—Classification of Work, Group 3, gives Welders and Welders' Helpers the exclusive "Work connected with . . . cutting torches. . . ."

The defenses proffered by Carrier are: (1) the use of the cutting torch was incident to the work of breaking up and removing the sidewalk—being but incidental its being done by employes of B&B forces did not violate the Rules Agreement; (2) citing Article III, Section 1, of the National Job Stabilization Agreement, the dispute is not a proper claim for consideration by this Division because:

"The National Job Stabilization Agreement of February 7, 1965, Article III, Section 1, provides in pertinent part that:

"The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines."

(3) that this Board should dismiss the Claim because the February 7 Agreement specifically provides that disputes arising thereunder shall be disposed of by the Disputes committee constituted and procedurally in accord with Article VII-Disputes Committee, Section 1, of said February 7 Agreement; and (4) the Claim appealed to this Board is not the Claim initiated by the District Chairman.

The claim submitted on the property as to the substantive violation of the Rules Agreement, is the same as that before this Board in paragraph (1) of the Claim. The variance is that: (1) on April 10 and 23, and May 12, 1968 the District Chairman claimed a total of 34 hours Welders' and Helpers' time in favor of "the Welding Department" account cutting torch being used by the paving gang in the B&B Department; (2) in letters dated June 14, 1968, the General Chairman claimed a total of 34 hours at Welders' and Helpers' rate "in behalf of the Welders and Helpers listed on the seniority roster;" (3) in letters dated August 16, 1968 in final appeal on the property the General Chairman named as Claimant's Welders Bouyear, Duffer, Carpenter and Rice, and Welders' Helpers Garcia, Carver, Briseno and Owens "for a days pay on April 5, 9, 11, 12, 15, 16, 17 and 18, 1968 account of B&B Mechanics using a cutting torch in connection with his regular work;" and (4) paragraph 2 of the Claim filed with this Board prays that each of the eight named Claimants "each be allowed pay at their respective straight time rate of pay for an equal proportionate share of the total number of man hours expended by B&B forces in the performance of the work referred to within Part (1) of this claim."

We find nothing in the record before us that Carrier transferred work within the contemplation of "the carrier shall have the right to transfer work" as employed by Article III, Section 1, of the National Job Stabilization Agreement of February 7, 1965, *supra*. We, therefore hold that Agreement is not applicable in the instant dispute and deny Carrier's motion that this Board dismiss the Claim for lack of jurisdiction. Further, we find that while the cutting of the steel rods was necessary to the breaking up and removal of the deteriorated sidewalk the cutting cannot be held to be an incident of the B&B work which would negate the Welders and Welders Helpers unqualified unequivocal, Rules established, exclusive right to "work connected with . . . cutting torches . . ." The use of cutting torches is always an incident in a project in which they are necessarily used. We will sustain paragraph 1 of the Claim.

We will deny paragraph (2) of the Claim because: (1) no demand was made on the property for payment of compensation to Claimants as per the formula set forth in the paragraph; (2) Petitioner adduced no evidence of probative value as to the actual gross number of hours of work with cutting torches; nor, did it adduce evidence as to how the number of hours can now be ascertained with satisfaction of due process.

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