



Award No. 19032  
Docket No. MW-19354

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Robert M. O'Brien, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN PACIFIC TRANSPORTATION COMPANY  
TEXAS AND LOUISIANA LINES**

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

(1) The Carrier violated the Agreement when it assigned and used welding department forces instead of roadway track department forces to perform track work at M.P. 361.50 between Spoford and Del Rio, Texas on April 29, 1970. (System File MW-70-46)

(2) Extra Gang Foreman A. Sanchez and Extra Gang Laborer A. Bill each be allowed eight (8) hours' pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

**EMPLOYEES' STATEMENT OF FACTS:** Extra Gang Foreman A. Sanchez and Extra Gang Laborer A. Bill hold seniority in their respective classes within the Roadway Track Department. Welder N. A. McCarn and Welder Helper V. A. Sanchez do not hold any seniority within the Roadway Track Department.

On April 29, 1970, Welder N. A. McCarn and Welder Helper V. A. Sanchez raised joints and tamped ties thereunder in the curve at Mile Post 361.50. Work of this character has customarily and traditionally been performed by the Carrier's Roadway Track Department forces. It has not been the practice to assign such work to welders and welder helpers as will be noted from the following quoted letters:

**LETTER "A"**

"San Antonio, Texas  
Dec. 12, 1970

Mr. M. Burrough,

I do not, and have not been instructed to pull and tamp joints before welding.

/s/ J. W. Poppell"

The Agreement in effect between the two parties to this dispute dated October 1, 1968, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENTS OF FACTS:** On April 29, 1970, Welder N. A. McCarn and Welder Helper V. S. Sanchez were instructed to weld joints in a curve at MP 361.50 near Del Rio, Texas. Assistant Chairman Allen, BofMofWE, was in the vicinity and observed their work, then filed a claim for an arbitrary and penalty day's pay in behalf of an Extra Gang Foreman (A. Sanchez) and an Extra Gang Laborer (A. Bill) for April 29, 1970, alleging the tamping of ties and raising of joints was reserved to track forces. The claim has been properly handled on appeal on the property and is now before this Division for decision. Correspondence in connection with the handling of this case on the property is attached as CARRIER'S EXHIBIT "A."

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Organization contends that Carrier violated the applicable Agreement when it assigned a welder and welder helper to pull and tamp joints not incidental to welding said joints, which work should have been performed by employees of the Roadway Track Department. The claim was presented on behalf of Foreman Sanchez and Extra Gang Laborer Bill, who hold seniority within the Roadway Track Department, as a result of the alleged violation. In support of its position, the Organization relies on the Scope Rule and the Seniority Rule.

The Scope Rule relied on by the Organization is general in nature, and under innumerable decisions of this Board, does not grant the Organization exclusive right to the work in question. Nor can the Seniority Rule be relied on to provide the Organization with the exclusive right to the work. This is certainly not the intent of the Seniority Rule.

Consequently, for the Organization to prevail, it has the burden of proving that the disputed work is of a kind that has been customarily and exclusively performed by the Roadway Track Department in the past. Carrier denies that claimants ever had an exclusive right to raising joints and tamping ties on its property.

This Board is of the opinion that the Organization has failed to sustain the burden of establishing by probative evidence that claimants, holding seniority in the Roadway Track Department, have in the past performed the disputed work to the exclusion of others. Once the exclusivity of the disputed work was controverted, the Organization had the burden of producing evidence proving exclusivity of the work to the exclusion of all others, which it failed to do. Accordingly, the claim will be dismissed.

**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.

**AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.