

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20258
Docket Number NW-20213

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Port Terminal Railroad Association

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

(1) The Carrier violated the Agreement when it assigned other than Maintenance of Way welders to **perform** welding **work** on a **Pettibone-Mulliken** Speed Swing on March 30 and 31, 1972 /System File MW-72-4 (PTRA)/

(2) Welder L. R. Tiller be allowed eight (8) hours' pay at his straight time rate and eight (8) hours' pay at his **time** and one-half rate because of the violation referred to within Part (1) of this **claim**.

OPINION OF BOARD: The **MofW** Employees assert that, on **March 30, 1972** and Good Friday, **March 31, 1972**, **the** Carrier used a machinist to perform welding on a machine assigned to the **MofW** department. The **MofW** Employees assert that use of the machinist was in violation of the Agreement, that Claimant, a **MofW** welder, was available and qualified to perform the welding, and that Claimant should now receive pro rata pay for **March 30** and time and one-half for Good Friday, **March 31, 1972**.

The Employees stated on the property that welding on **MofW** machines has always been done by **MofW** welders. The Carrier's response on the property was that there was no contract violation; that it did not agree that welding on equipment belonged to any one department inasmuch as Carrier had welders in numerous departments on its property; that the welding and repair of equipment falls in the category of machinists' work; and that, in order to avoid delay, Carrier had the machinist do the welding which consumed approximately twenty (20) minutes. The Carrier's Submission to this Board states the Carrier's position differently. The Submission states that the machine was taken to the shop where a Roundhouse Machinist-Welder was used to do welding work on the machine, and that such had occurred on previous occasions: that no work was performed on March 31, 1972, Good Friday; and that the claim cannot prevail because the **MofW** Scope Rule is a general one, and there has been no showing that **MofW** employees **performed** the disputed work to the exclusion of other crafts.

Two of Carrier's defenses have been challenged as not having been raised on the property. We find on the record that the defense concerning no work on March 31 was raised by Carrier's assertion that the work consumed no more than twenty minutes and we shall therefore consider this defense. However, the Carrier made no reference on the property to the general nature of the **MofW** Scope Rule or the exclusivity doctrine and, consequently, this defense is not properly before the Board.

The remaining defenses by Carrier raise the question of whether the **MofW** Employees have an agreement right to the disputed work. The Employees contend that Award 19949, involving the same issue and the same parties, has resolved this question in favor of the **MofW** Employees. We concur. In that Award repair work being performed by **MofW** Employees on **MofW** roadway equipment was claimed by the Machinists, whereupon the Carrier unilaterally transferred the work to the Machinists. In adjudicating the ensuing **MofW** claim **that** the transfer of work violated their agreement, this Board concluded that repair work on equipment within the **MofW** Department belonged to **MofW** Employees. The welding work in dispute here is repair work on equipment within the **MofW** Department. Thus, the issue and the parties in the instant dispute are the **same** as in Award 19949 and we shall therefore sustain Part 1 of the claim. In respect to Part 2 of the claim we note that the Carrier, as previously indicated, did not directly challenge the monetary amount of the claim on the property by making any express contention that no work was performed on March 31; however, the Carrier indirectly challenged such monetary amount by its statement that the work consumed only twenty minutes. We believe it would be hyper-technical to rule that this was not a challenge to the Employees contention that the welding entailed two days of work, especially since the Carrier's Submission points out that March 31 was a holiday and that, so far as its records reflect, no work was performed on the holiday by either Machinists or **MofW** Employees. Accordingly, we shall sustain the **claim** for March 30, 1972, and deny the claim for March 31, 1972.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

A W A R D

Part 1 of the claim is sustained. Part 2 of the claim is sustained in part and denied in part as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **May**, 1974.