

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21843
Docket Number MW-21477

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Robert W. **Blanchette**, Richard C. Band and
(John H. **McArthur**, **Trustees** of the Property of
(**Penn** Central Transportation Company, Debtor

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

(1) The Agreement was violated when, on April 6 and 20, 1974, an **employee** junior to Track Welder John Borrelli was called and used for overtime service and, as a consequence thereof

(2) Track Welder John Borrelli shall be allowed sixteen (16) hours of pay at his time and one-half rate.

OPINION OF BOARD: The instant dispute arose when Carrier failed to call Welder John Borrelli for overtime service on April 6 and 20, 1974. On Saturday, April 6, 1974, a track gang was called to perform track work in connection with a derailment. On Saturday, April 20, 1974, once again a track gang was called to perform track work in connection with a derailment. On both dates, a member of the gang cut rails with an acetylene torch. It is the Organization's position that the work of cutting rail using an acetylene torch is work reserved exclusively to track welders. Accordingly, Claimant, the senior available qualified welder, should have been called to perform this work on both claim dates which were his rest days.

The Organization relies on Rule 53, Classification, and Rule 26-A, Work **On** Unassigned Days, to support their contention that Claimant, rather than a junior employee, should have been used to perform the work in question. However, the facts evidence that the Organization never raised the issue on the Property that Rule 26-A was violated in the instant case. Consequently, we hold that it is too late for them to raise it for the first time before this Board. No citation of authority is needed for this generally accepted principle.

This Board further holds that Rule 53 does not reserve the work of cutting rails exclusively to Track Welders as claimed by the Organization. This Board has consistently held that classification of work rules, such as Rule 53, do not reserve work exclusively to the job classifications enumerated therein. Thus, when an employee other than a Track Welder cut rails on the claim date, Rule 53 was not thereby violated.

The **Organization** has cited no contractual provision, save for Rule 26-A which is not properly before us, in support of their position that the work in question was reserved exclusively to Track Welders. Inasmuch as the Organization has failed to establish that the work of cutting rails belonged exclusively to Claimant's job classification, Claimant's seniority did not entitle him to be called for the work on his rest days.

This Board additionally concludes that Third Division Awards 10358 and 10768, **relied on** by the Organization, **lend** no support to their position. Although both those Awards involved **Rule 53**, the facts therein were not analogous to those currently before this Board. In both those Awards, an **employee** of another craft performed the work complained of. We therefore find those Awards factually distinguishable from the claim at **hand** since here a member of claimant's track gang performed the rail cutting.

The instant claim is devoid of any contractual support and must be denied as a result.

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;

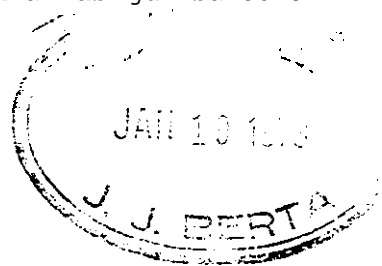
That the Carrier and the **Employees** involved in this dispute are respectively Carrier **and Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.