

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Norfolk and Western Railway Company (formerly
(The Pittsburgh and West Virginia Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Track Department employees instead of Welding Department employees to perform torch cutting work beginning March 28, 1985 (System File MW-ROK-85-3).

(2) As a consequence of the aforesaid violation, Welding Department employees W. McWreath, Jr., L. Whitaker, G. Cooke, R. Federer, Jr., H. Longstreth, Jr., R. Parry, M. Montani and M. Bungert shall be allowed all straight and overtime hours that Track Department employees perform torch cutting work beginning March 28, 1985 continuing until the violation is corrected."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Commencing sometime in 1983 Carrier began assigning cutting torches to section crews and track patrolmen to be used as needed in removing rusted bolts and washers, cutting rail, burning rods and clip bolts in instances where a torch could be used in place of a wrench, hammer or chisel. On April 1, 1985 the Organization presented a Time Claim on behalf of eight welding department employees contending that they were now being deprived of work as a result of the assignment of cutting torches to track department personnel. This Claim alleged that welding department employees have, since 1967, had an exclusive right to use such torches.

Carrier's basic defense to the Claim is that track forces have always been furnished necessary tools for the performance of their duties. These tools now include cutting torches which were placed with track crews and patrolmen to allow them to handle their assigned duties in a more efficient manner. Carrier also stated that the torches were not used in connection with welding but were used in a manner incidental to work generally performed by track crews.

At the outset we must observe that the Organization has not cited a single instance where track crews used a cutting torch to complete work which previously had been exclusively performed by welding department employees. Essentially the substance of their Claim is that an Agreement violation occurred with the placement of cutting torches in the tool inventory of track crews because, since 1967, such equipment had not been available to such crews.

We have often held that it is not the tool that is used but the nature of work performed which determines the class of employees to be used. In Third Division Award 10024 we considered an allegation that a violation occurred when track department employees did the work of welding department employees when an acetylene torch was used for cutting rails and track bolts. In denying that Claim we stated:

"Where the cutting to be performed is incidental to track work, we find no language in either the Scope Rule or the seniority provisions which we can invoke to restrain the Carrier from supplying the track Gang with a cutting torch to do work incidental to the removal of rails."

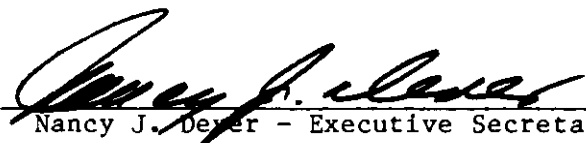
This Claim will also be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.