

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

(1) The Carrier violated the Agreement when, on February 14, 17, 18, 19, 20, 21, 24, 25, March 10, 12, 31, April 1, 2, 3 and 4, 1986, it assigned trackmen to assist Welder Foreman M. Saculla, instead of recalling furloughed Welder Helper T. Hazlerig (System File TH-4-86/UM-7-86).

(2) As a consequence of the aforesaid violation, Welder Helper T. Hazlerig shall be allowed one hundred twelve (112) hours straight time pay, twelve (12) hours time and one-half overtime pay and eight (8) hours holiday pay - all at the Welder Helper's rate."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes 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.

This dispute concerns a Claim on behalf of a furloughed Welder Helper when Trackmen not holding Welder Helper seniority were assigned to work with a Welder Foreman on dates between February 14 and April 4, 1986. It is undisputed that these were dates on which the Welder Foreman's partner, a Welder, was assigned elsewhere or on vacation. The Organization relies on Article 3(e), which reads as follows:

"(e) An employe assigned to the operation of any grinding device used in connection with welding work as described in the paragraph next preceding shall constitute a grinder operator. Helpers shall be employes assigned to assist welders and grinder operators in the performance of their work."

The Carrier argues that use of available Trackmen was appropriate in that, according to the Carrier, the only duty involved was that of flagging, which is not necessarily limited to Welder Helpers. In contrast, the Organization's on-property correspondence indicates that the Trackmen were employed to "help load and unload the truck and watch for train" and they "went and got stuff when I needed it without me having to do it." In addition, there was reference to dates on which "there was no need for a flag man and the work performed by the Trackman was no different than work customarily performed by Welder Helpers."

The Organization does not dispute that the Carrier is not necessarily required to provide a Welder Helper in all instances. Here, however, the record indicates that such help was provided by the Carrier. Further, the use of the Trackmen was clearly in replacement of a Welder Helper who would otherwise have been assigned, if he had not been on vacation or placed elsewhere.

These circumstances distinguish this instance from that considered in denial Third Division Award 25579 which concerned Laborers "used only as look-outs."

The Carrier raises some question as to the Claimant's eligibility for holiday pay in the event the Claim is otherwise sustained. Since the Award will find that the Claimant should have been recalled for the dates claimed, the question of holiday pay can be determined in the usual manner based on such recall of a furloughed employee for the period in question.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.