

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier assigned two (2) B&B welders and one (1) B&B painter instead of B&B carpenters to perform repairs on the Wooden Bridge at Mile Post 23.43 on the Hallam Branch beginning July 28, 1986 (System File M-430/860170).

(2) As a consequence of the aforesaid violation, furloughed B&B Carpenters S. Ricks, M. M. Hoppes and M. O. Wassenberg shall each be allowed eight (8) hours of pay at the first class carpenter's rate for each work day beginning July 28, 1896 and continuing for so long as B&B welders and a B&B painter were assigned to perform repair work on the bridge in question."

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 employes 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.

The three Claimants in this case hold seniority as Carpenters within the Bridge and Building Subdepartment. They were on furlough on the dates for which Claim is made.

The events giving rise to this dispute began on July 28, 1986, when Carrier assigned B&B Gang 3441 to the vicinity of Mile Post 23.43 on the Hallam Branch to redeck a bridge near that location. The Gang consisted of a Foreman, 2 B&B Welders, 2 B&B Carpenters and one B&B Painter. The Organization took exception to the force complement of this Gang and filed the instant

Claim, alleging that Carrier should have recalled the Claimants to perform the carpentry work involved, rather than assigning two Welders and one Painter from B&B Gang 3441, who hold no seniority as Carpenters. In support of its Claim of exclusivity, the Organization relied during the handling of this case on the property on Rules 4 and 8 which state respectively in pertinent part:

"RULE 4 - SENIORITY GROUPS AND CLASSES
SHALL BE AS FOLLOWS:
BRIDGE AND BUILDING SUBDEPARTMENT

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Group 3

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(e) B&B Welder

(f) Carpenter

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Group 5

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(e) Bridge and Building Painters

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"RULE 8. BRIDGE AND BUILDING SUBDEPARTMENT

The work of construction, maintenance and repair of building, bridges, tunnels, wharves, docks, non-portable car buildings, and other structures, turntables, platforms, walks, snow and sand fences, signs and similar structures as well as all appurtenances thereto, and other work generally so recognized shall be performed by employes in the Bridge and Building Subdepartment.

Section 1 - Bridge and Building Carpenter:

An employe assigned to the construction, repair and maintenance of buildings, bridges or other structures, (except structural, iron or steel work provided for in Section IV), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter.

* * * * *

(b) B&B WELDER. Welding, burning and cutting in connection with construction or repairs of bridges, buildings and miscellaneous structures."
(Emphasis added)

"(d) CARPENTER - FIRST CLASS. General carpenter work, laying out building and repairing buildings, bridges and miscellaneous structures, operation of wood working machines incidental thereto, building and repairing built-in office fixtures and setting up cabinet work and milled material and cement finishing. Must be able to read blue prints.

* * * * *

Section III - Painter:

An employe assigned to cleaning or preparation of surfaces to mixing, blending, sizing, applying of paint, kalsomine or white wash, or other types of preservatives, either by brush, spray or other methods, or glazing, shall constitute a painter.

* * * * *

(c) PAINTER - FIRST CLASS. Mixing paints for matching colors and applying paint or varnish in connection with buildings (including fixtures), signs and markets, and miscellaneous structures."
(Emphasis added)

It is the Organization's position that the foregoing Rules clearly establish that the Carpenters, Welders and Painters are separate classes which have distinctly delineated duties and responsibilities. In this case, the Organization asserts, the disputed work was clearly reserved to B&B Carpenters and Carrier violated the Agreement by assigning two B&B Welders and one B&B Painter to perform such work.

Carrier advances several arguments in support of its position that there is no Rule Agreement support for the instant Claim. First, Carrier maintains that Rule 13 clearly provides for the assignment of composite Gangs without restrictions. That Rule provides:

"(a) The assignment of composite gangs consisting of one or two mechanics from any of the classifications in the Bridge and Building Sub-department in Bridge and Building, Paint and Steel Erection gangs working under the supervision of respective foreman is permitted." (Emphasis added)

Second, Carrier submits that Claimants are not proper Claimants and had no contractual right to the work in question. Third, Carrier disputes the Organization's contention that only carpentry work was performed on the Claim dates. According to the Carrier, there was also welding work performed.

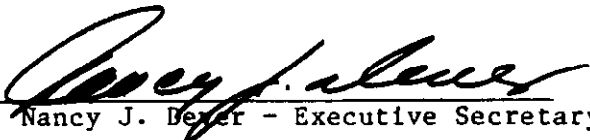
We have carefully reviewed the record in this case and the precedent Awards cited by the parties. In particular, we take note of those cases which state that where there is a jurisdictional question between employees of the same craft in different classes, the burden of establishing exclusivity is very great. See Third Division Awards 20425, 13198. However, in this case, the Board is of the view that the Rules with which we are here dealing are sufficiently specific so as to preclude necessity for proof of exclusivity. In our opinion, Rules 4 and 8 reserve to the Carpenters the work alleged to have been performed by the Painter and Welders on the date in question. Furthermore, although Carrier asserted that "a Welder had to be utilized to make several welds and cuts for the construction of this bridge " it never offered any probative evidence to support that assertion. Even if it had presented the necessary proof, however, it is clear that such work represented only an incidental portion of the entire work project, performed by five employees for more than 38 days. Moreover, Carrier's reliance upon Rule 13, Section 1 dealing with composite gangs is misplaced. The work involved here was not of a composite nature and should have been assigned to a B&B Gang comprised of B&B Carpenters.

Finally, with reference to the Carrier's contention that the Claimants are not proper Claimants, numerous Awards of this Board have held that the question of who is named as Claimant is incidental since the essence of the Claim is a Rule violation and penalty Claim. Therefore, even assuming, arguendo, that another employee may have a better right to the Claim, Carrier is not relieved of the violation and penalty arising therefrom. Third Division Awards 18557, 25830.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.