

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
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(Duluth, Winnipeg & Pacific Railway Company

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

(1) The Carrier violated the Agreement when it assigned Welder Helper J. Jacobson to perform overtime service on August 20, 21, 22 and 23, 1985 instead of using Welder D. Ritacco who was available and willing to perform that service [System File G-106-III-R-85(S)].

(2) Welder D. Ritacco shall be allowed eighteen and one-half (18 1/2) hours of pay at his time and one-half 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 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.

At the time of this Claim, in August 1985, Claimant was a Senior Welder assigned under the Supervision of a Welding Foreman. The Carrier's welding crew at that time consisted of the Foreman and Claimant, plus a Junior Welder and a Welder Helper.

On the dates in question, the Loram Rail Grinder was working on the Carrier's property. As usual, the Welding Foreman was in charge of the rail grinding, and was required to be with the rail grinding train. In such situations it was customary for the Foreman to put the Senior Welder temporarily in charge of the welding crew, to oversee the regular work of that crew. The Welding Foreman did so on the dates in question. Claimant was paid at the rate of the Welding Foreman, and Claimant and the Junior Welder performed the regular maintenance work of the welding crew on those dates.

At the same time, however, the Foreman assigned the Helper, to drive a Hi-Rail-equipped pickup truck and follow the grinding train, so that he would have transportation at the beginning and end of each day and when needed. In the course of that assignment, the Helper worked a total of eighteen and one-half hours of overtime on the Claim dates. According to the evidence exchanged on the property, however, the Helper was not required to do any welding-related work or any work connected with the grinding train except drive the pickup truck.

The Organization claims that the overtime worked by the Helper on the Claim dates should have been assigned to Claimant because he was the senior person on the welding crew. The Carrier disagrees. The Carrier asserts that, had it assigned Claimant to drive the pickup truck following the grinding train on the dates in question, it would have had to suspend its normal welding maintenance work, because it would not have had a senior, qualified person to take charge of the welding crew. Both the Foreman and the Senior Welder who ordinarily covers for the Foreman would have been with the grinding train. Furthermore, the Carrier contends that, during his temporary assignment, the Helper was not asked to perform any work which belongs exclusively to the welders. The Carrier argues that no rule of the Agreement has been cited by the Organization which requires the Carrier to give such overtime work to the senior available welder.

The Carrier's position is well taken. The Organization admits that the Agreement is silent on situations like this, but argues that, in general, seniority prevails throughout the Agreement. The Organization also contends that the Carrier provided no evidence of an established practice of giving overtime assignments of this nature to welder helpers. On the other hand, the Organization pointed to several instances in the past when Claimant was utilized to assist the welding Foreman on the grinding train. However, the Organization's arguments are not enough in this case.

It is not the Carrier's burden, but the Organization's, to establish that the work sought in this Claim is exclusively reserved to Claimant. The Organization has not established that point in this case. The Organization is unable to point to a specific provision in the Agreement which declares that the work in question was Claimant's by right. Also, the Organization's evidence that Claimant has assisted the Foreman on the grinding train does not establish that a practice exists of giving to Claimant the precise type of work that the Helper performed on the dates in question. The record indicates that the Helper did not perform welding work on those dates, but simply followed the train in a truck.

The absence of proof of a specific Agreement provision or an established practice in this type of case distinguishes this Claim from the others upon which the Organization relies as precedent. The Organization's failure of proof likewise defeats its attempt to invoke Rule 10 of the Agreement, which governs the filling of temporary vacancies. In order to invoke that rule also, the Organization must show that the vacancy involved work exclusively reserved to employees of the Claimant's class. See, Third Division Award 26251. To the same effect is Third Division Award 27072. Both of those Awards stand for the proposition that the Organization cannot simply


assert Claimant's right to certain work, but must establish that right in the Agreement or through evidence of longstanding practice. Because that has not been done here, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.