NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 29975
Docket No. MW-28814
93-3-89-3-210

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it paid Mr. R. W. Horn at the welder rate instead of the lead welder rate for work he performed on Gang 2359 beginning March 14, 1988 (Carrier's File 880290 MPR).

(2) The Agreement was further violated when the Carrier failed to allow Mr. R. W. Horn a seniority date as a lead welder as of the date of assignment to the Old T&P Seniority Roster.

(3) As a consequence of the violation referred to in Part (1) above, Mr. R. W. Horn shall be allowed the difference between what he should have received at the lead welder rate and what he was paid at the welder rate beginning March 14, 1988 and continuing until the violation referred to in Part (1) above is discontinued.

(4) As a consequence of the violation referred to in Part (2) above, Mr. R. W. Horn shall be allowed a lead welder seniority date as of the date of assignment to the Old T&P Seniority Roster."

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 employe 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.

Claimant is employed by the Carrier as a welder on the Southern District Old TP Seniority District.

On March 11, 1988, the Claimant, who was previously assigned to Gang 1153, was assigned a welder position on Gang 2359 after Carrier abolished Gang 1153.

On April 4, 1988, the Organization filed a Claim contending that the Carrier violated the Agreement when it failed to pay the Claimant at the lead welder rate. The Organization further contended that the lead welder position was abolished but all responsibilities corresponding with said position were incorporated with the new welder position. Therefore, since the Claimant performed the lead welder duties in his new position, the Organization argues he should be paid at the lead welder's rate.

The Carrier denied the claim on the grounds that the Claimant worked as a welder and, therefore, he should be paid at the welder's rate of pay.

The Organization appealed the claim contending that historically employees assigned to lead welder positions who performed supervisory responsibilities were compensated at higher rates of pay.

The Carrier once again denied the claim on the grounds that the position was advertised as a welder at the welder's rate of pay and the Claimant placed a bid for this position fully aware of its terms.

This Board has reviewed the record in this case and we find that in a February 25, 1988, bulletin the Carrier advertised the positions of welder and welder helper. Claimant bid on the welder job. On March 3, 1988, Claimant was awarded the welder job. Although some of the duties that were subsequently performed by the Claimant in his new position are often performed by a lead welder, the fact remains that the Claimant was not supervising any other welders nor was he assigned to the lead welder position. Therefore, the claim must be denied.

The Board has reviewed the Agreement and we find nothing that requires the Carrier to pay the Claimant as a lead welder when there were no other welders for him to supervise.

Special Board of Adjustment No. 279 has looked into this issue in the past in Awards 429 and 430, and that Board has held that the

position of lead welder "can only be in order when there may be more than one welder in the gang." We agree.

The Organization has simply not met its burden of proof that the Carrier in this case violated the Agreement. Consequently, we have no choice but to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.