

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30229
Docket No. MW-29794
94-3-91-3-150

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
(
(Soo Line Railroad Company

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

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted employes of the CSX Corporation, instead of System Welding Foreman H.R. Terry, to perform welding work on the Latta Subdivision in the vicinity of the crossing at Spring Hill, Indiana on July 17, 1989 and again in the vicinity of the crossing at Dewey, Indiana on July 27, 1989 (System File C #34-89/800-46-B-349 CMP).
- (2) As a consequence of the aforesaid violation, Welding Foreman H.R. Terry shall be allowed sixteen (16) hours' pay at his respective straight time rate for the work performed by CSX welders on July 17 and 27, 1989."

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.

This Claim concerns the repair of two rail crossings used jointly by the Carrier and CSX. The first was a rail defect found at the Springhill, Indiana, crossing on July 17, 1989, and the second was a break in the corner of a crossing "frog" at Dewey, Indiana, on July 27, 1989. In both instances, the Carrier and CSX found it necessary to confine trains traversing such crossing to a "slow" travel restriction.

In both instances, repair was performed under CSX direction by a CSX Welder, holding no seniority with the Carrier. The Claimant is a Welding Foreman, who is acknowledged to hold welding seniority throughout the Carrier's system. He was not called for the repair work.

The Carrier asserts that this was an "emergency situation" and that the "work in question was directed and performed by CSX personnel, on CSX trackage and CSX property" and thus the Carrier argues there is no basis whatsoever for the Claim. This assertion was repeatedly made by the Carrier, but no specific support was provided to indicate that the crossover locations were in fact "CSX trackage and CSX property."

The Organization, in response, demonstrated through Carrier track diagrams that the locations were in fact designated for maintenance by the Carrier and not CSX. In the absence of reply to this evidence the Board is persuaded that, under normal conditions, the work here would have been assigned to a Carrier Welder, such as the Claimant.

While the Organization argues that imposing a "slow" condition on train movement is not an "emergency", the Board supports the Carrier's view that the repair work was required in an urgent manner to avoid possible accident and resulting damage. There is no indication, however, that the Carrier made any attempt to bring one of its qualified employees to perform the repair work. One of the Carrier's defenses is that the work was performed by CSX without the Carrier's knowledge. This is difficult to accept, since the "slow" order was in effect for both carriers, and Carrier supervision therefore had some foreknowledge of the two problems.

In sum, the Board concludes that action was taken in an expedient fashion, but this does not negate the rights of the Claimant as against use of an employee holding no seniority with the Carrier. Despite a variety of other arguments, the Carrier failed to demonstrate conclusively that any consideration had been given to assign the work to the Claimant. In these circumstances, the fact that the Claimant was otherwise actively at work is insufficient to defeat the Claim of Agreement violation.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Linda Woods

Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.