

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30279
Docket No. MW-28926
94-3-89-3-335

The Third Division consisted of regular members and in addition Referee Gil Vernon when award was rendered.

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

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

- (1) The Carrier violated the Agreement when it assigned a welder and welder helper to perform rail grinding work beginning on April 19, 1988, instead of assigning it to furloughed Roadway Power Tool Operators K. D. Pennington and M. L. Swain (System File S-33/880506).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimants shall be allowed two hundred fifty-six (256) hours of pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 basic facts are undisputed. In April 1988, and continuing for a little over a month's period of time, the Carrier instructed two Welders to perform the work of slotting rail ends and grinding switches including grinding frogs in switches and grinding complete switches consisting of stock rails and switch points.

The thrust of the claim is that this work is reserved to Roadway Power Tool Machine Operators (RPTMO). Of course, to prevail, the Organization would have to show that this work is reserved to this classification by virtue of Agreement language and/or past practice.

In this case, the language of the Agreement does not reserve the work to the RPTMO classification. The Agreement language does not reserve to the RPTMO classification the process of grinding. Instead, it reserves to them the operation of certain types of equipment, one of which performs grinding work. Relevant here is Rule 9 (g) which reads as follows:

"(g) ROADWAY POWER TOOL MACHINE OPERATORS. Work in connection with operation, care and running repairs of track machines listed as follows:

(Compressors, Adzing Machine, Power Jack, tie Bed Scarifier, Track-air, Rail Grinder (mounted on flange wheels), Ballast Router, Dun-Rite Gauger, Gandy Crane, Tie Saw, Tie End Remover)"

In this case, it is undisputed that the Welders did not use a rail grinder mounted on flange wheels.

In terms of practice, it is noted that both Parties make respective claims that, in the Organization's case, RPTMO's do this grinding work and, in the Carrier's case, Welders have always done this work until newer machines were introduced. It is the Board's opinion that neither Party has sustained its contentions. Since the burden is on the Organization, the claim must be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.