

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32020
Docket No. MW-31510
97-3-93-3-503**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad (former Colorado and
(Southern Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Track Department laborers instead of Track Welding Department Welder D. Noel and Welder Helper J. E. Guana to operate a cutting torch on a daily basis to cut rail in connection with a rail pickup operation between Grenville and Walsenburg, Colorado on June 15, 16, 17, 18, 19 and 20, 1992 (System File CS-92-09/7MWD 92-10-19 CSR).**
- (2) As a consequence of the violation referred to in Part (1) above, Welder D. Noel and Welder Helper J. E. Guana shall each be allowed forty (40) hours' pay at their applicable straight time rates and twenty-six (26) hours' pay at their applicable time and one-half rates.”**

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 were given due notice of hearing thereon.

It is undisputed that Carrier used track laborers to cut rail with an oxy-acetylene cutting torch on the claim dates in connection with a rail pickup train operation. The Organization asserts the work in question is exclusively reserved to the Welder and Welder Helper classification via Agreement Rule 3(a)(8 and 10), a Classification of Work Rule.

Carrier, to the contrary, asserts such work is not exclusively reserved to any classification. Moreover, Carrier says the work was properly assigned pursuant to the composite service rule, Rule 22. That rule reads, in part, as follows:

"An employee temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day, will be allowed the higher rate for the entire day."

Carrier also asserted the torch work consumed less than four hours each day. In addition, Carrier contended each Claimant was fully employed on the claim dates.

With the reservation of work issue thus joined, it was incumbent upon the Organization to produce evidence to support its assertion that the disputed work had been customarily, traditionally and historically assigned to Welders and Welder Helpers to the exclusion of all others. The on-property record contains no such evidence. Instead, the Organization relied almost entirely on the text of Agreement Rules 3(a)(8 and 10).

It is well settled, as a general matter, that Classification of Work Rules do not exclusively reserve work to given classifications. The awards of this Board recognizing this principle are too numerous to list.

The awards cited by the Organization in support of its position are inapposite. They involve other parties, other rule language and different circumstances.

The Organization's position also conflicts with Rule 22. This provision is a general rule recognizing that employees in lower paid classifications may permissibly be temporarily assigned to perform higher rated work. The Organization's position would effectively render Rule 22 to be meaningless in these circumstances regardless of whether the quantity of the higher rated work was greater or less than four hours per day. Such an interpretation is not one that has received arbitral favor.

The Organization had the burden of proof to establish every element of the claim. On this record, we must find it has not done so. *The claim, therefore, must be denied.*

AWARD

Claim denied.

ORDER

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 6th day of May 1997.