

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34050
Docket No. MW-32480
00-3-95-3-248**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Group 14 Oregon Division Track Welder - Arc Welder Process L. W. Matlock, Welder Helper B. L. Hathaway and Group 10 Machine Operator B. R. Bartmess to perform thermite welding work (eliminating jointed rail and/or creating continuous welded rail) on the Kenton main line at Wyeth and Portland, Oregon (System File N-80/940322).**
- (2) The Agreement was violated when the Carrier assigned Group 14 Idaho Division Track Welder - Arc Welder Process M. S. Tilley and Track Welder Helper - Arc Welder Process R. D. Holm to perform thermite welding work (eliminating jointed rail and/or creating continuous welded rail) between Soda Springs and Monpelier, Idaho (System File N-75/940294).**
- (3) The Agreement was violated when the Carrier assigned Group 14 Oregon Division Track Welder - Arc Welder Process R. L. Hall and Welder Helper R. D. Shade to per form thermite welding work (eliminating jointed rail and/or creating continuous welded rail) beginning at Mile Post 537.25 at Huntington, Oregon and moving west on May 5, 1994 (System File N-104/940457).**
- (4) As a consequence of the violation referred to in Part (1) above, Group 14 Oregon Division Rail Heat Treating employees B. L.**

Hathaway, V. D. Bronson and D. R. Bruxton shall each be allowed pay for an equal proportionate share of the total number of man-hours, straight time and overtime hours consumed by Group 14 Oregon Division Track Welder - Arc Welder Process L. W. Matlock, Welder Helper B. L. Hathaway and Group 10 Machine Operator B. R. Bartmess, retroactive sixty (60) days from the date the claim was filed and continuing until the violation ceases, with vacation, retirement, insurance benefits and any other entitlements accruing thereto as if they had performed the work claimed.

- (5) As a consequence of the violation referred to in Part (2) above, Group 14 Oregon Division Rail Heat Treating employees M. L. Dunn, G. D. Gallegos, S. R. Thornock and Group 18 Extra Gang Laborers R. D. Spiering and J. A. Shields shall each be compensated at their respective rates of pay, straight time and overtime, for an equal proportionate share of the total number of man hours consumed by Group 14 Idaho Division Track Welder - Arc Welder Process M. S. Tilley and Group 14 Track Welder Helper R. D. Holm, retroactive sixty (60) days from the date the claim was filed and continuing until the violation ceases, with vacation, retirement, insurance benefits and any other entitlements accruing thereto as If they had performed the work claimed.
- (6) As a consequence of the violation referred to in Part (3) above, Group 14 Oregon Division Rail Heat Treating employees B. L. Hathaway, V. D. Bronson and J. A. Hofstetter shall each be compensated at their respective rates of pay, straight time and overtime, for an equal proportionate share of the total number of man-hours consumed by Group 14 Oregon Division Track Welder -Arc Welder Process R. L. Hall and Welder Helper R. D. Shade, retroactive sixty (60) days from the date the claim was filed and continuing until the violation ceases, with vacation, retirement, insurance benefits and any other entitlements accruing thereto as if they had performed the work claimed."

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.

The Organization submitted claims on behalf of three Thermite Weld Process Gangs who were not assigned the work of performing thermite welding work, namely eliminating jointed rail and/or creating continuous welded rail on the Kenton main line at Wyeth and Portland, Oregon. The Organization contends that thermite weld process work is separate and distinct from all other types of welding in the Track Department. Therefore, according to the Organization, the Carrier should have bulletined and assigned Thermite Welding forces to perform this work rather than assign it to Arc Welders.

There are seven classes within Seniority Group 14 in the Carrier's Track Subdepartment, including Class (b) Track Welder-Arc Weld Process and Class (c) Track Welder-Thermite Weld Process. The rates of pay of these two classes are slightly different.

Evidently, the parties recognized a distinction between Arc Welding and thermite welding. However, the applicable Schedule Agreement does not expressly reserve work to either of these Group 14 Welding Gangs. Moreover, the Organization has not established that the Class (c) Track Welder-Thermite Weld Process class of employees has exclusively performed thermite welding by custom and tradition. Therefore, the Carrier has the managerial right to assign thermite welding to either Class (b) or Class (c) in Seniority Group 14 of the Track Subdepartment.

For the foregoing reason, the Board finds that the parties' Agreement was not violated when the Carrier assigned Arc Welding Gangs to perform thermite welding on the Kenton main line in Wyeth and Portland, Oregon. The three claims protesting this work assignment are denied as a result.

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 25th day of May, 2000.