

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36933  
Docket No. MW-36176  
04-3-00-3-373

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes  
(  
(Union Pacific Railroad Company (former Chicago &  
( North Western Transportation Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Federated Craft Welder D. L. Baack and Welder Helper B. D. Bielema to perform routine Maintenance of Way and Structures Department trackman's work (repair, maintenance and/or installation of track, turnouts, crossings and snow removal) at locations on Seniority District 2 beginning on January 25 and continuing through July 1, 1999, instead of assigning furloughed Trackmen D. W. Juhl and B. L. Hackbarth (System File 2RM-9036T/1189479 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. W. Juhl and B. L. Hackbarth shall now each be compensated for five hundred four (504) hours' pay at the applicable trackman's straight time rate 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 were given due notice of hearing thereon.**

**As Third Party in Interest, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers was advised of the pendency of this dispute and chose to file a Submission with the Board.**

**The Claimants were furloughed Trackmen, who had established and held seniority in the Maintenance of Way and Structures Department, Track Subdepartment. According to the Organization, on the claim dates, the Carrier assigned Federated Craft Welder D. L. Baack and Welder Helper B. D. Bielema to perform "routine track maintenance consisting of, but not limited to, snow removal, crossing maintenance and repair, track and turnout maintenance and repair, construction and installation of track turnouts, and construction and installation of track panels."**

**The Organization argues that the Carrier reports showing work codes, work locations, and work descriptions corresponding to the respective dates worked by Federated Craft Welder Baack and Welder Helper Bielema establish that they performed Track Subdepartment work while assigned to Gang 2998. The reports are persuasive and substantial evidence that the work performed by Baack and Bielema was track maintenance work, not welding, to which the Federated Craft Welders have no entitlement, the Organization stresses.**

**The Organization also emphasizes that pursuant to Rules 1, 2, 3, 4, 5 and 7 of the Collective Bargaining Agreement, the Carrier was required to recall the Claimants, who were the senior, qualified, furloughed, employees, and offer them the maintenance work performed on each claim date instead of assigning the work to employees who possessed no Maintenance of Way craft seniority or work rights.**

**Furthermore, with respect to the snow removal work performed on January 25, 1999, the Organization avers that previous Board Awards have held that such work is "track maintenance" reserved to Maintenance of Way craft employees. Also, there is no proof that the Carrier had faced a snow emergency on that date. Therefore, the Board must find that the Claimants were contractually entitled to the disputed snow removal work, and that there was no emergency that warranted the performance of that work by the Federated Craft employees.**

In response, the Carrier states that on January 25, 1999, a snow emergency existed and thus allowed the Carrier latitude to assign Welder Baack and Welder Helper Bielema to the snow removal work. The Carrier also asserts that, on the remaining claim dates, the work performed on the Carrier's former Chicago and North Western (C&NW) territory by the Federated Welder Craft employees Baack and Bielema was reserved to them by Agreement between the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and the Carrier.

The Carrier stresses that based on a statement from Manager D. H. Deurloo, Welder Baack and Welder Helper Bielema worked in accordance with their Agreement, having performed the work of grinding switches, repairing "CWR" joints, and welding switch and crossing panel jigs for use on "Federated Craft Welder territory." In the Carrier's view, the Organization did not provide any statements or other proof to the contrary. Finally, the work report information cited by the Organization is used for accounting purposes and does not serve to rebut Deurloo's first-hand accounts of the welding work actually performed by Baack and Bielema.

According to the Boilermakers' third party Submission, the Carrier did not violate the Controlling Agreement when the Federated Craft Welders performed welding duties on the former C&NW territories. According to the Boilermakers, Federated Welders on the former C&NW properties may perform work that includes maintenance repairs on turnouts, track, track panels, and road crossings.

The Board carefully reviewed the entire record and finds this is not a case of irreconcilable factual conflict, as the Carrier has suggested. However, with the exception of the January 25, 1999 claim date, the majority of the Board finds that the Organization has not sustained its burden of proof with respect to its allegations concerning the work performed by the Federated Craft Welders on the remaining claim dates. As numerous tribunals have repeatedly stated, the Organization bears the burden of proving its assertions of Carrier Work Rule violations though the submission of substantial evidence. See Third Division Awards 36542 and 36543.

The Organization's work reports, displaying accounting-type information, are insufficient evidence that the Federated Craft Welders performed Maintenance of Way craft work on the claim dates, given the personal statement furnished by Manager Deurloo. Again, according to Duerloo, employees Baack and Bielema worked on switches, rail joints and crossing panels to be used on the "Federated Craft Welder territory." Thus, in the absence of any probative evidence from the Organization refuting Duerloo's statements, the majority of the Board concludes that the work

reports alone do not substantiate the Organization's position that Welder Baack and Welder Helper Bielema performed track maintenance work in violation of the BMW Collective Bargaining Agreement.

Regarding the claim for the snow removal work performed on January 25, 1999, the Board finds that the record does not demonstrate that a snow emergency existed. Therefore, given the circumstances in this case, the Claimants should have been offered the snow removal work, in accordance with Rule 1 – Scope, paragraph (b). Likewise, there is no evidence that on January 25, 1999, the Welder and Welder Helper dug out switches in connection with any rail repair work. As a result, the Claimants are entitled to eight hours at the straight-time rate of pay for the snow removal work performed by the Federated Craft Welder and Welder Helper on the January 25, 1999 claim date. See on-property Awards 16, 17 and 64 of Public Law Board No. 1844. The claims for all other dates are denied for lack of proof.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 22nd day of March 2004.**