Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38086
Docket No. MW-36731
07-3-01-3-279

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Soo Line Railroad Company (former Chicago,
(St. Paul and Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Holland Industries) to perform Maintenance of Way and Structures Department work (rail welding and grinding) in the yard at Bensenville, Illinois beginning on November 2, 1998 and continuing, instead of Welder Foreman B. Olson, Welder D. M. Randall, Grinder T. L. Tisdale and Welder Helpers V. Simonini and C. Otero (System File C-36-98-C080-10/8-00228-037 CMP)

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract said work as required by Rule 1 and failed to enter good-faith discussion to reduce the use of contractors and increase the use of Maintenance of Way forces as set forth in Appendix I.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants B. Olson, D. M. Randall, T. L. Tisdale, V. Simonini and C. Otero shall now be compensated for a '. . . total of 916 hours in the aggregate, [or] in the

proportionate 183.2 hours for EACH CLAIMANT at their applicable time and one-half (1-1/2) rates 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.

The instant controversy arose out of the clash of technologies used for welding rail. It is undisputed that the Carrier properly served notice and, with the Organization's concurrence, used an outside contractor to perform flash butt welding at Bensenville Yard in 1997. The same contractor was again used in late 1998 to perform more flash butt welding at the same location as part of the same ongoing project. No separate notice was served by the Carrier for the 1998 welding that forms the basis of the instant claim.

While the record deals with several points of conflicting contentions, the pivotal issue before the Board is one of Scope Rule coverage, because that issue dictates the various rights and responsibilities involved in the claim.

The Organization contends that the work in question is reserved to BMWE-represented employees. Moreover, the Carrier failed to provide the requisite notice. Accordingly, the Claimants are entitled to the remedy requested.

The Carrier, to the contrary, contends there is no scope coverage for flash butt welding as distinct from thermite welding. As such, it had no obligation to provide notice. Nonetheless, the Carrier contended that it gave notice for the

overall project in 1997 and, as such, there was no need to repeat that notice for the 1998 welding that was simply an extension of the same Bensenville Yard project.

The pivotal issues here were the subject of Third Division Award 36425 and essentially identical considerations involving these same parties. There, as here, the dispute was over flash butt welding. There, as here, the dispute involved the same Agreement provisions. There, as here, the record was unequivocal about the type of welding previously performed by Carrier forces and the type of welding that had been performed by outside contractors.

It stands unrefuted in the record that BMWE-represented forces have never performed flash butt welding. The Carrier does not own flash butt welding equipment and none of its employees have been trained to operate such equipment. Carrier forces have only performed thermite welding of rail joints.

As Award 36425 observed, the "NOTE" to Appendix I of the parties' Agreement requires notice only in ". . . the event Carrier plans to contract out work within the scope of this agreement, . . ." Because the record in that case showed that BMWE-represented employees had never performed flash butt welding, the Award found that the work in dispute was not covered by the general Scope Rule. The Award went on to find no violation of the Agreement or its notice requirements. Obviously, the Board found the significant distinction between thermite welding and flash butt welding to be determinative for the purpose of Scope Rule coverage. (Emphasis added.)

We do not find the analysis and logic set down in Award 36425 to be palpably erroneous. Accordingly, the parties' interests in consistency, stability and predictability with respect to the application of their Agreement calls for the Board to follow Award 36425. Accordingly, we find the work in dispute here was not proven to be covered by the applicable Scope Rule. The Carrier did not, therefore, violate the Agreement when it did not provide separate notice for the work to be performed by contractor forces in 1998.

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 21st day of February 2007.