

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the provisions of Rule 18 of the current working agreement between the Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employes when it did not allow Welder Helper Reese Tuttle pay at the Welder's rate of \$231.63 per month, for work performed on the following dates:

March, 1944—7-8-9-10-11-13-14-15-16-18-24-25-27-28-29-30-31.

April, 1944—1-3-4-5-6-7-8-10-11-12-13-17-18-21.

(2) That Reese Tuttle be allowed the difference in pay between what he did receive at the Welder Helper's rate of 74c per hour and what he should have received at the Welder's rate of \$231.63 per month for the above mentioned dates.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Reese Tuttle, is employed as a welder helper on the Pennsylvania Division, and during the period involved in this claim, was being paid at the rate of 74c per hour. He was regularly assigned to work with Welder Ray Tuttle, whose rate of pay during the period of this claim was \$231.63 per month. The claimant's regularly assigned headquarters were at Carbondale.

During the period involved in this claim, he was instructed by his superior officer to operate a motor car from Carbondale to various points along the line where rail was being laid and to perform any work required necessitating the use of an acetylene torch. A trackman employed at Carbondale was assigned to assist him in the operation of the motor car and in performing any work involving the use of an acetylene torch. During the period in this claim, Welder Ray Tuttle was assigned to perform work at various locations and was not working with Welder Helper Reese Tuttle. Welder Helper Reese Tuttle was performing work which would ordinarily have been performed by Welder Ray Tuttle had both the welder and the welder helper been working together.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 18 of the effective agreement, provides as follows:

OPINION OF BOARD: The sole question involved in this case is whether the Claimant should be paid the welder's rate of pay, \$231.63 per month, or be paid 74 cents per hour, the rate paid welders' helpers, on the dates in March and April, 1944, set out in the claim. Its solution depends on whether the work performed by Claimant on said days was welders' work, or work coming under the duties of his regular assignment, that of welders' helper. Claimant was paid at the welders' helper's rate, and contends that he should have been paid at the welders' rate, and asks for the difference between the two. He bases his claim on Rule 18 of the Agreement between the Carrier and the petitioner, effective November 15, 1943, and which reads:

"Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

The provisions of the Rule being clear, the question in issue is one of fact, and is: was Claimant, on the several days named in the claim, assigned to perform, and did he perform, helper's work without the supervision of his welder chief?

The claim of the petitioner, as set up in its submission, is:

"During the period involved in this claim, he (claimant) was instructed by his superior officer to operate a motor car from Carbondale to various points along the line where rail was being laid and to perform any work required necessitating the use of an acetylene torch. A trackman employed at Carbondale was assigned to assist him in the operation of the motor car and in performing any work involving the use of an acetylene torch. During the period in this claim, Welder Ray Tuttle was assigned to perform work at various locations and was not working with Welder Helper Reese Tuttle. Welder Helper Reese Tuttle was performing work which would ordinarily have been performed by Welder Ray Tuttle had both the welder and the welder helper been working together."

It will be noted that petitioner does not directly assert that the Claimant actually performed any welder's work while assigned to the track laying job; although it does say, in effect, that had the welder been on that job he would have performed this work which the Claimant actually performed.

The Carrier does not deny that Claimant was assigned to perform the work connected with the laying of track, as set up in the claim and submission; but contends that it was not welder's work, and that on its line welders are not used in track laying operations. It says that the work the Claimant performed, on the days covered by the claim, was the use of an acetylene torch in cutting operations, and other general work of assisting in laying rail and renewing switches. It says: "At no time did he perform any welding nor was welding work assigned to him or expected of him. The service that he did perform on each date was what has always been required and expected of a welder helper, when he is not actually assisting a Welder, in a welding operation." At another point in its submission, the Carrier states: "Welder Helper Tuttle was not assigned to a higher rated position on the dates in question. He was merely assigned to the rail laying gang to assist in the laying of rail as a welder helper." The Carrier files a statement of the work Claimant performed on the days covered by the claim. This statement is not disputed, and the same does not show that Claimant did any welder's work on those days.

Petitioner stresses the fact that whatever work the Claimant did, was performed in the absence of the welder for whom he was helper. If he had performed welder's work, this position would be sound on principles laid down in Award No. 412 of this Division. But the mere fact that an employee is classified as a welder's helper, does not mean that he may not be called upon to do other work. Rule 18 impliedly permits this, else there would be no reason for the rule. It may be assumed that welder's work was not a continuous requirement, and it is clear from this docket that there was work, other than work which required both the welder and his helper to

perform, which the helper could perform without his superior being present. In other words, performing work, not welder's work, by a welder's helper, without the supervision of the welder, does not constitute the welder helper a welder, and entitle him to the pay of that position. If the work performed by the helper, in the absence of his principal, was in fact, welder's work, then he would be entitled, under Rule 18, to the pay of a welder.

The present claim must be denied because it has not been shown that the Claimant, on the days covered by the claim, performed any welder's work; and this being true, whether the work he did was or was not performed in the absence of his superior, the welder under whom he customarily worked as helper, is immaterial. The Claimant was an employee who could be called upon to do any character of work covered by the Agreement under which he worked. Under Rule 18, if he was assigned to the work of a higher rated position, he became entitled to the pay of that position; but if assigned to a lower rated position, his pay could not be reduced. But the power to make the assignment rested with the Carrier. We do not believe that Claimant was assigned to a higher rated position, or that he performed the work of a position, higher than that of a welder helper. We, therefore, hold that there has been no violation of the Agreement, and that the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there has been no violation of the Agreement.

AWARD

Claims (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.