

Award No. 4548
Docket No. MW-4508

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, 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 agreement by not compensating Trackman Carmine Bianco at the Welder Helper's rate of pay while he was assigned to assist Welder Tuttle during the period September 24, 1945 and October 18, 1945 inclusive;

(2) That Trackman Carmine Bianco be reimbursed for the difference in pay due him as a result of the Carrier's violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: During the period September 24, 1945 to October 18, 1945, both days inclusive, Trackman Carmine Bianco was assigned by the proper officer to assist Welder Ray Tuttle. The work performed by Trackman Bianco was making sand molds and setting clamps in connection with Thermit welding of rails. Trackman Bianco was also required to assist in grinding rail ends after such rail ends were welded together.

Trackman Bianco was allowed pay at the trackman's rate of 67 cents per hour rather than the welder helper's rate of 74 cents per hour.

Rule 18 of the effective agreement provides as follows:

"Employes 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."

Agreement dated November 15, 1943 between the two parties and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: On September 17, 1945 the claimant was assigned by the proper officer of the Carrier to assist Welder Tuttle in performing work outlined in the Employes' Statement of Facts.

During the period September 17 to September 22, both dates inclusive, Trackman Bianco was allowed pay at the welder helper's rate of 74 cents per hour. However, during the period September 24 to October 18, both dates inclusive, he was allowed pay at the trackman's rate of 67 cents per hour,

making molds. When the molds were made, the welder, assisted by the welder helper, placed same and the welder helper was also required to assist with the clamps and grinding. These latter duties were not required of Bianco.

It is the duty of each Supervisor (in this case the welder) to report the time worked by himself and crew, and for the period in question the welder's time report indicated that only two (2) men, himself and helper, were a part of his gang, as the time report indicates sixteen (16) hours daily. Also, the time report of the Section Foreman of the gang to which Bianco was assigned indicated that Bianco was detached from his gang on September 25 and 26, October 1, 4, 8, 9, 10 and 11, 1945 in order to perform duties with rail welding outfit. He, however, was carried on the Section Foreman's time return as a trackman for those dates.

There is no evidence to support that claim that Bianco performed any duties of welder helper after September 22, 1945.

OPINION OF THE BOARD: The System Committee of the Brotherhood contends Carrier violated its agreement with them when, on September 24, 1945, to October 18, 1945, inclusive, it failed to compensate Trackman Carmine Bianco at Welder Helper's rate of pay for work performed on those days when it assigned him to help Welder Ray Tuttle. It asks that he be compensated for the difference in rate of pay on those days for what he actually received at trackman's rate and what he should have received at Welder Helper's rate.

The record shows that claimant was assigned to help Welder Ray Tuttle on September 17, 1945, because Welder Helper Reese Tuttle was on vacation. During the period from September 17 to September 22, 1945, inclusive, while Welder Helper Reese Tuttle was on vacation, claimant was paid at welder helper's rate of pay. Reese Tuttle returned to work on September 24, 1945, but claimant was retained for services with the welding outfit until October 18, 1945. During this time he helped make sand molds, set up clamps, set up molds, and assisted in welding and grinding. This is work ordinarily performed by a welder's helper.

Rule 18 of the parties' agreement provides:

"Employes assigned to higher rated positions shall receive the higher rate while so engaged; * * *."

While incident to the work he performed while retained for service with the welding outfit may have been some track work, however, the primary purpose of retaining his services with the welding outfit was to have him perform the work of a welder's helper, which he did. Consequently, under Rule 18, he is entitled to be paid as such.

While Carrier states that claimant did not work with the welding outfit on all of the days during the period from September 24 to October 18, 1945, inclusive, it offered no evidence in support thereof. The only affirmative evidence thereof is the signed statement of the claimant setting forth the fact that on every day during this period, except Sundays, he worked at performing the duties which we find to be that of a welder's helper. Therefore we find the claim should be sustained.

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.