Award Number 4611

Docket Number MW-4665

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the Agreement by not allowing Welder's Helper Douglas Morgan to do the welding in connection with the installation of siding and roof on the building at St. Louis, New Diesel Shop, from April 24, 1948 up to the time this work was completed;

(2) That Douglas Morgan be now compensated for the difference in pay he received at the Helper's rate and what he should have received at the Welder's rate during the period specified in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Douglas Morgan is a regularly assigned electric welder's helper, St. Louis, Missouri. He is the regularly assigned helper for Electric Welder Tom Welch.

Commencing on April 24, 1948, Electric Welder Tom Welch by direction of the Carrier instructed two B&B mechanics in the proper use of this electric stud welder used for the purpose of welding stud bolts on the iron frame work of the new Diesel Shop at Ewing Avenue, St. Louis. After Welder Welch was satisfied that these B&B employes had sufficient instructions to enable them to operate this welding tool by themselves, he then left them. These B&B mechanics worked a period of approximately six (6) days performing this welding work.

Electric Welder's Helper Douglas Morgan contends that the Carrier should have assigned him to the performance of this work and that he should have received from Electric Welder Welch the necessary instructions in the use of this tool.

The Carrier has denied this claim.

The Agreement in effect between the two parties to this dispute, dated July 1, 1938 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope Rule of the effective agreement states as follows:

"SCOPE: These rules govern the hours of service and working conditions of all employes herein named in the Maintenance of Way

Morgan could have learned to operate the electric machine which Bridge & Building Mechanic Faulkenberry used.

POSITION OF CARRIER: It is the position of the Carrier that Mr. Faulkenberry, Bridge & Building mechanic, performed the work of a Bridge & Building mechanic and not that of a welder. He is not qualified as a welder and he did not use the equipment of a welder.

It is further the position of the Carrier that the Bridge & Building mechanic, by the use of this electric tool, actually accomplished the same end that he did accomplish prior to the use of the electric tool, and that was to provide a stud on the steel framing so that he could then attach the siding by means of a nute and a washer run against the siding onto the threaded stud.

The mere fact that by the use of the hand tool placed in the hands of the Bridge & Building mechanic we still accomplished the same work that the Bridge & Building mechanic had formerly accomplished by other methods leads the Carrier to the conclusion that it was proper for the Bridge & Building mechanic to take over the operation of the tool.

Had the electric hand tool not been put into use and the Carrier then required a welder with welding skill to use welding equipment and actually weld the studs onto the framework, then it might be said that it would have been proper to have used a welder. The claimant, Douglas Morgan, was not a welder. There was no welding work to be performed, therefore, he was not used to perform the service of a Bridge & Building mechanic.

The claim is without merit and should be declined.

Exhibits not reproduced.

OPINION OF BOARD: This claim relates to the same work involved in our Award No. 4609 but is a claim for promotion under Rule 11 (b) by an Electric Welder's Helper. That rule provides for "promotions to new positions or vacancies." No new position was created nor did any vacancy exist. There was merely an assignment of work. The fact that the work was assigned to the wrong job classification did not create a new position or a vacancy because it could have been assigned to those employes holding the positions entitled thereto. New positions are created by the Carrier and vacancies occur when the occupant of a position is absent or ceases to occupy it. Neither situation occurred here and the claim is without merit.

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 the Carrier did not violate the Agreement.

AWARD

The claim is hereby denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.