

Award No. 7835

Docket No. MW-7689

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ERIE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when they assigned certain Welders and Welder Helpers to work with headquarters different from those designated for their Welder Foreman;

(2) The Carrier further violated and continues to violate the effective agreement when they require the four (4) Welders (two (2) on the Eastern District and two (2) on the Western District) to assume the duties and responsibilities of a Welder Foreman and compensates them for services rendered at the Welder's rate of pay;

(3) The four (4) Welders be paid the difference between what they received at the Welder's rate of pay and what they should have received at the Welder Foreman's rate of pay until such time as the violations referred to in parts one (1) and two (2) of this claim are corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 21, 1953, the Carrier's two (2) District Welding Forces, each consisting of a Welder Foreman, two (2) Welders and two (2) Welder Helpers, were assigned to Camp Cars which were designated as their headquarters. The employees of each of these forces were working under the supervision of a Welder Foreman.

Subsequent to July 21, 1953, the Carrier, through agreement with Mr. Leonard Serino, General Chairman of the Brotherhood of Maintenance of Way Employees, purchased some house trailers to be used as the headquarters in lieu of camp cars. The agreement with respect to making this change reads as follows:

"ERIE RAILROAD COMPANY

July 21, 1953

Mr. Leonard Serino, General Chairman,
Brotherhood of M. of W. Employees,
117 Hawley Street,
Binghamton, N. Y.

Dear Sir:

We are contemplating purchasing some house trailers to be used for gangs in place of camp cars.

vene the plain mandate of the Railway Labor Act. In short, such an award would have the effect of destroying all of these things. This Division of the Board, however, has no authority to effect such a result.

In the light of the facts set forth herein, the Carrier submits that the matter quoted at the beginning of this submission should be dismissed and that the original matter cannot be ruled on as it is not before the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 1954 the Carrier had two district welding gangs, one being assigned to the eastern district and the other to the western district. Each gang consisted of two Welders and two Helpers working under a Foreman who supervised and laid out the work to be performed. These gangs, including the Foremen, were housed in camp cars which were designated as their headquarters and which were moved from point to point as required.

On or about March 1, 1954 four house trailers were substituted for the two camp car outfits, one Welder and one Helper being assigned to each trailer. The district arrangement remained unchanged, except that the Welder Foreman for the eastern district thereafter was assigned to permanent headquarters at Susquehanna, Pa., while his counterpart for the western district was similarly assigned at Marion, Ohio. Following this change, each Foreman periodically inspected the work performed by the Welders and Helpers in his district and gave instructions concerning the location of their next assignment. The Foremen also were given responsibilities concerning other matters not involving the subject welding gangs, and which are not pertinent to this controversy. Under the new arrangement each Welder was required to fill out daily time slips for himself and his Helper. In addition, the Welders were required to make written reports on material requisitions and related matters.

Approximately eight months before the new arrangement was put into effect the Carrier conferred with the Organization and secured agreement to the use of house trailers instead of camp cars, and for the designation of the trailers as headquarters of the gang assigned to them. The Carrier also contends, but the Organization denies, that the division of the two welding gangs into four gangs, and the assignment of the Welder Foremen to headquarters different than those of the Welders and Helpers, were matters that also were agreed upon.

The Organization contends the above-described division of the welding gangs and the assignment of the Welding Foremen to different headquarters is contrary to the consistent past practice and is violative of the Agreement. It asserts the Welders have been required to assume the duties of Foreman and requests that they be compensated at the Foremen's rate of pay until such time as the alleged violations are corrected. The Carrier contends the claim presented to the Board is different from the claim progressed on the property and therefore should be dismissed. On the merits, the Carrier contends the Organization had agreed beforehand to all phases of the new arrangement for welding gangs. Moreover, Management asserts that there is no agreement rule requiring that a Foreman must have the same headquarters as the men under his jurisdiction, that the Foreman have continued to supervise the subject Welders and Helpers, and that the Welders are not performing the duties of a Foreman.

During the progressing of the dispute on the property the Organization contended that the positions involved in the welding gangs should be readvertised and that the additional compensation should be granted the Welders for the asserted reason that they were given increased responsibility due to working without the supervision of a Foreman. The Organization also protested on the property the rearrangement of the welding gangs as already indicated, although it agrees that advance concurrence was given to substituting house trailers for camp cars. Under these circumstances we do not think the claim presented is fatally defective, as urged by the Carrier.

This Board is without authority to change the rate of pay contractually specified for a particular classification. We can only determine whether the duties required of claimant employes are within the scope of a classification calling for a different contract rate. As already noted, the Organization contends that by virtue of the duties required of them the claimant Welders are entitled to the Welder Foreman's rate of pay.

Among the various awards cited as bearing upon the subject case is one in which the Board has stated that "an employe is required to be assigned under the supervision of a foreman and with the same headquarters as the foreman except as the Agreement otherwise permits." (Award 3257) That case involved a Carpenter position which was bulletined at a location other than the headquarters of the gang to which the subject position belonged. There the Foreman had the same headquarters as the gang.

The effective Agreement in the present case contains no specific reference to the identity of headquarters for a Foreman and the men he supervises. It could be argued that the assumption implicit in the Agreement is that a Foreman has the same headquarters as his gang (e.g., Rule 36). Under the circumstances involved in this case, however, we cannot say that the Carrier's separation of the welding gangs and their Foremen insofar as headquarters location is concerned was a violation of the Agreement.

The new arrangement reduced the amount of supervision given to the Welders and their Helpers, thereby increasing the responsibility placed upon the Welders. As a general matter we think a carrier has the prerogative to determine the extent or degree of supervision it desires to exercise over its employes, absent an agreement rule to the contrary. On the other hand, it is the intent of the composite service rule, which is contained in the subject Agreement, that an employe shall receive the rate of pay applicable to the position the duties of which he performs.

In the light of the Board awards pertinent to the matter at issue, and under the facts peculiar to this case, we are of the opinion that the duties and responsibilities of the claimant Welders are equivalent to those of a Leading Welder rather than those of a Welder Foreman. We hold therefore that the claimants are entitled to be compensated in the amount of the difference between what they received at the Welder's rate of pay and the compensation they would have received at the Leading Welder's rate, so long as the present welding gang arrangement remains in effect or until such time as the positions involved are properly established and filed as Leading Welder positions.

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 violated the Agreement in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1957.