

**Award No. 11081**

**Docket No. MW-9795**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Roy R. Ray, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY**

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

(1) The Carrier violated the effective Agreement when it assigned other than Maintenance of Way Welders to perform the work of repairing tamping bars (tools) for tamping equipment.

(2) Maintenance of Way Welder L. Tatro be allowed pay at his straight time rate for a number of hours equal to the number of hours consumed by the other employees since February 13, 1956 in performing the work referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier owns a number of units of multiple tamping equipment which it utilizes in the maintenance and repair of its tracks.

Each of the aforementioned units of tamping equipment has a number of tamping bars (tools) which become worn after a certain period of operation which necessitates these tamping bars being removed from the machines and repaired. The repair work is accomplished by a welder rebuilding the worn surface of the tamping bars with a welding device and the hardfacing (tempering) thereof.

Since the purchase of the very first unit of tamping equipment by the Carrier, the work of repairing these tamping bars (tools) has been assigned to and performed by the Carrier's Maintenance of Way Department Welders.

Nonetheless, on February 13, 1956, the Carrier began shipping these tamping bars (tools) to its Automotive Shop at Elizabethport, New Jersey where the work of repairing said tamping bars was assigned to and performed by Motive Power Department Welders, who hold no seniority rights under the provisions of this Agreement.

The claimant, Mr. Lawrence Tatro, who was regularly assigned to the position of Welder, was available, fully qualified and could have efficiently and expeditiously performed the work described above, had the Carrier so desired.

the Carrier has violated their agreement of June 30, 1955 providing for a separate sub-department for Welders, Helpers, etc.

As information, we are attaching as Exhibit "B" a copy of the agreement of June 30, 1955 referred to by the employees, which we do not feel is in any manner involved in the instant case and, therefore, has not been violated in the performing of the work referred to herein.

In conclusion, it is the position of this Carrier that the determination as to where the Maintenance of Way machines and equipment are to be repaired—whether on the line of road or in the shop—is purely management's prerogative, and inasmuch as Carrier has not violated any agreements with the Employees, this claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the employees representatives.

**OPINION OF BOARD:** Carrier uses tamping machines in maintaining its tracks. Each machine has a number of tamping bars which become worn with use and, from time to time, have to be removed from the machines and repaired. This is accomplished by rebuilding the worn surface of the bar with a welding device and hardfacing (tempering) it. The present claim charges Carrier with violation of the Scope Rule when, on February 13, 1956 and thereafter, it assigned some of this work to employees in the Automotive Shop at Elizabethport, New Jersey, who were not covered by the Agreement between the parties.

Petitioner contends that under the Scope Rule this work of repairing tamping bars belongs to the Maintenance of Way Welders because it has heretofore been assigned to and performed by them. The Scope Rule provides that Maintenance of Way employees "shall perform all work in the Maintenance of Way and Structures Department". In previous cases between these same parties the Board has held this to be a general type Scope Rule. In order to determine whether particular work belongs to the employees covered, we must look to the conduct of the parties. As the Labor Member puts it in his brief, the rule allocates "to employees within its coverage all work which has been customarily and traditionally performed by them." In order to establish a right to the work in question and sustain the present claim, Petitioner has the burden of proving by specific evidence that it has been the practice for this work to be performed exclusively by Maintenance of Way Welders. While Petitioner alleges this, proof in support of the proposition is wholly lacking. For its proof, Petitioner relies upon three letters from Maintenance of Way Welders (one of whom is Claimant) to the General Chairman. These letters were all written between August 1, 1956 and January 29, 1957, months after the final denial of the claim by Carrier, (May 24, 1956) and since they were not discussed on the property, will not be considered by this Board.

Petitioner's case is further weakened by the position taken by the General Chairman in his correspondence with Carrier concerning problems involved in the establishment of the Automotive Shop at Elizabethport, New Jersey. These letters dealt with the repair of machines used by Maintenance of Way employees. In three letters written between October 29, 1954 and September 16, 1955, the General Chairman voiced objection to a proposed agreement between Carrier, International Association of Machinists and Maintenance of Way Employees only insofar as it en-

croached upon the right of Maintenance of Way Employees to make repairs along the line of road. He took the position that Maintenance of Way machinists (welders) for years past had been making repairs to equipment on the line of road and that this arrangement should continue to prevail. In none of the letters did he take any exception to the proposal for repairing of machines in the Automotive Shop at Elizabethport, New Jersey. In fact, in the first letter he said, "It was my understanding that . . . the machinists under our agreement would continue to make what repairs that could be made on the line of road and that if the machine was taken into the shop for repairs, the repair would be made by the employees in the Automotive Shop." In the January 26, 1955 letter he used similar language showing that his concern was with the Maintenance of Way employees being able to make repairs on the line of road. The Petitioner makes much of the fact that the General Chairman did not sign the proposed agreement. The significant fact is, however, that if the Maintenance of Way welders had been making all the repairs as alleged in the claim (repairing all the tamping bars) it would have been the normal thing for the Chairman to protect against the proposal that these repairs be made in the Elizabethport Shop. The fact that he did not do so is strong circumstantial evidence that there was no such exclusive practice as Petitioner claims.

We hold that Petitioner has failed to establish that the work in question belongs entirely to Maintenance of Way welders. Therefore, Carrier's assignment of the work to the Shop employees did not violate the agreement.

**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 the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.