

Award No. 13878

Docket No. MW-13598

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on May 25 and 29, 1961 and on June 8, 1961, it assigned or otherwise permitted two (2) welding sub-department employees to perform track sub-department work while track sub-department employees E. O. Webster, A. J. Lykins and E. C. Hamilton were cut off and available and willing to perform the subject work.

(2) (a) Cut-off track sub-department laborers E. O. Webster and A. J. Lykins each be allowed sixteen (16) hours' pay at straight-time rates because of the violations occurring on May 25 and 29, 1961.

(b) Cut-off track sub-department laborer E. O. Webster and cut-off track sub-department power wrench operator E. C. Hamilton each be allowed eight (8) hours' pay at their respective straight time rates account of the violations occurring on June 8, 1961.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 25, 1961, Track Sub-department Power Wrench Operator E. C. Hamilton and Track Sub-department Laborers E. O. Webster and A. J. Lykins were furloughed as the result of force reduction.

On May 25 and 29, 1961 and again on June 8, 1961, the Carrier's track forces were renewing rail at Mile Posts 66, 67 and 68. The Carrier assigned a welder and a welder helper to perform this required welding and cutting work. In addition to such welding and cutting work, the Carrier further assigned or otherwise permitted the same Welding Sub-department employees to perform such well-recognized track work as removing bolts from splice bars, removing the splice bars, assisting the track forces in rolling out of the old rail and placing the new rail, replacing the splice bars and bolts and operating the power wrench.

The Employees have contended and continue to contend that the track work here involved should have been assigned to and performed by Track Sub-department employees.

roll out some of the old rail and knock off some of the old splices. Claim was filed for furloughed section laborers E. O. Webster and A. J. Lykins for 8 hours at laborer's rate.

On June 8, 1961, new rail was laid on the Cincinnati Division and the welder helper knocked off some of the old splices. A claim was filed for furloughed section laborer E. O. Webster for 8 hours at laborer's rate.

On June 8, 1961 the power wrench operator was assigned to other work and the welder operated the power wrench machine. Claim for 8 hours was filed for furloughed power wrench operator E. C. Hamilton.

POSITION OF CARRIER: There was nothing unusual when the welders rendered the track men assistance in laying rail, for such is the common practice. The welders and their helpers and track men have always worked in conjunction with one another in such circumstances, rendering assistance when possible. Even if the welder and his helper had not seen fit in this instance to assist in the small way they did, certainly it would have had no adverse effect on earnings of the section men, and neither did it deprive section men of any overtime payment, as none would have accrued, because the job in question was a normal job for a section gang to perform. Actually, it is surprising that such a claim was filed, because the welder and his helper, of their own volition, simply followed the practice of long standing in a spirit of cooperation.

There is no reason to even suspect that any employee was deprived of employment by the assistance rendered the section men by the welders. The only difference is, the section men would have had to work a little harder.

It is carrier's position that when the welders and track men worked together in progressing the work, no provision of the agreement was violated.

Insofar as the claim in favor of cut off machine operator E. C. Hamilton is concerned, he would not have been recalled and, therefore, suffered no loss in compensation. There was only one welding outfit and one power wrench operator assigned to the job, and as the regularly assigned power wrench operator and welder were paid their respective rates of pay there was no necessity for recalling Hamilton to participate in the work. In a normal operation on a job of this kind there is nothing unusual for machine operators to "trade" jobs of their own volition for short periods of time—in this manner, they become more familiar with the operation of the various types of machines.

The organization has not contended that additional men were needed on any of the dates involved to complete the work, but the claims are for 32 hours for furloughed employees. It is, therefore, obvious that the claim is, in fact, a penalty claim, but there are no provisions in the Maintenance of Way Agreement that provide for such penalty payments. This is also contrary to the findings of this Division which has held in numerous awards that penalties cannot be awarded unless the agreement so provides.

OPINION OF BOARD: In this claim the Organization alleges the current agreement was violated on May 25 and 29, 1961, when a welder and a welder helper assisted track forces on the Carrier's Cincinnati Division, to roll out some old rail; and again on June 8, 1961, when a welder operated a power wrench.

The current agreement clearly differentiates between the classifications of employees of the Track Sub-department and those of the Welding Sub-department. The record shows the welder and the welder helper performed services on the days in question which invaded the seniority rights of recall to service of the Claimants, and we must, therefore, sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.