

Award No. 13916

Docket No. MW-13854

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORP.**

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

(1) The Carrier violated the Agreement when, instead of calling and using Welder Helper Richard E. Strader to perform ten and one-half (10½) hours of Welder Helper's work on January 17, 1961, it assigned Trackman Elmer E. Lee to perform said welder helper's work.

(2) Welder Helper Strader be allowed ten and one-half (10½) hours' pay at the same rate he would have been paid had he properly been called and used to perform the aforesaid welder helper's work.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 17, 1961, Welder Helper Richard E. Strader was furloughed account of force reduction.

On January 17, 1961, Welder George Lawton was assigned to and was working with a contractor who was welding ribbon rail at Oneonta, New York. At about 9:30 A.M., Welder Lawton was notified that, upon the arrival of Welder John Newcomb, who was being sent to relieve him, he (Welder Lawton) was to proceed to the vicinity of NE Cabin for the purpose of repairing a frog. Welder Newcomb arrived at about 11:00 A.M. and shortly thereafter Welder Lawton departed for NE Cabin, as instructed.

Because Welder Lawton required assistance in performing the frog repair work, Trackman Elmer E. Lee was assigned to and did assist him from 11:00 A.M. to 9:30 P.M.

The claimant, who resided only a short distance from Welder Lawton's headquarters, was willing, available and qualified to perform the subject welder helper work, but he was not called to do so.

The Agreement in effect between the two parties to this dispute, dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

Because of this alleged violation, the Organization is claiming that furloughed Welder Helper Richard E. Strader should be paid ten and one-half hours of pro rata pay.

POSITION OF CARRIER: Claimant Strader was employed by this corporation as a Welder Helper in our Maintenance of Way Department on July 14, 1960, and was displaced and furloughed as of December 21, 1960. Therefore, on January 17, 1961, he had the status of a furloughed employee.

On January 17, 1961, upon the arrival of Welder Lawton at the scene of the defective turnout frog at NE Cabin, it was found that Welder Lawton would require assistance in repairing this piece of equipment. It is the position of the Organization that Carrier should have called claimant Strader from furlough to assist Welder Lawton in making the necessary repairs. It is the position of the Carrier that such a contention puts a strained interpretation on the rules of the Agreement and imposes a penalty not specifically provided by the Agreement.

In support of their position in this dispute, the Organization has referred to Rules 1 (a) and (b), 2, 3 (a) and 4 of the Agreement of November 15, 1943. These rules, in the main, deal with seniority, and it is the position of the Carrier that Rule 4 is the only rule which has any application to the alleged violation involved in this dispute.

Rule 4 of the current Agreement between the parties reads as follows:

"FORCE INCREASE

Rule 4. Employees displaced or out of service because of force reduction will be given an opportunity to return to service or to former positions in accordance with their seniority **when forces are increased or vacancies occur.**"

Claimant Strader was " * * * out of service because of force reduction * * *" and Rule 4 provides that he " * * * will be given an opportunity to return to service * * * when forces are increased or vacancies occur." On the date of claim neither was the force increased nor did a vacancy occur.

It is the position of the Carrier that in an emergency situation it was not necessary for the Carrier to canvass furloughed employees in an effort to obtain needed help for emergency service. It should be remembered that we are not here concerned with a continuing need for a welder helper, nor are we concerned with a situation in which the Carrier used an employee of another class over an extended period. In this instance, a welder needed assistance to complete emergency work. An available employee, who had been used as a welder helper in the past, was pressed into service to provide such assistance and, upon completing this emergency assignment, returned to his regular work. It is the position of the Carrier that this furloughed Welder Helper had no claim to this emergency work under any rule of the Agreement covering Maintenance of Way employees.

Under the circumstances, it is the position of the Carrier that this claim is without merit and should be denied.

OPINION OF BOARD: On Tuesday morning, January 17, 1961, the assistant track supervisor at Oneonta was informed of a broken frog in the track at NE Cabin, about 46 miles south of Oneonta. After his investigation, he instructed the clerk to call Welder George Lawton to repair the frog. Since Mr. Lawton was welding ribbon rail, he could not leave Oneonta

until he received relief. Upon his arrival at NE Cabin in the afternoon, Welder Lawton requested assistance in repairing the frog. Trackman Elmer E. Lee was then assigned to help Welder Lawton.

Welder Helper Richard E. Strader claims he should have been called from furlough to assist in making the necessary repairs, rather than a trackman, who holds no seniority rights in the welder helper class. He relies primarily on Rule 4 to support his position.

Carrier acknowledges that Rule 4 is applicable, but denies a violation of it. Furthermore, it urges that the emergency situation justified the pressing into service an available trackman who had been used as welder helper in the past.

Rule 4 is controlling in this dispute. It provides that:

“Employees displaced or out of service because of force reduction will be given an opportunity to return to service or to former positions in accordance with their seniority when forces are increased or vacancies occur.”

Although Carrier asserts that on the date of claim the forces were not increased nor did a vacancy occur, we find there was need for the services of additional help to assist in performing the welding work. When Carrier is required to add to its force, it is obligated under Rule 4 to recognize seniority rights by giving preference to an employee in the same craft; in this case, it is Welder Helper, Richard E. Strader.

Although the damaged frog was inspected by the assistant track supervisor at 8:00 A. M., Carrier waited until 11:00 A. M. for Welder Lawton, who did not leave for the repair location until he received relief for his position. Under these circumstances, the use of a trackman to assist the welder cannot be justified on the grounds of an emergency.

Claimant Strader was the available welder helper with seniority, and, therefore, was entitled to the work in dispute.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to the 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

Since the Agreement was violated, this claim is allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1965.