Award No. 18442
Docket No. MW-18703

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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 January 25 and February 2, 1969, it used a track sub-department employe to assist Welder B. P. Spencer in the performance of overtime service instead of calling and using Welder Helper R. Reed. (System File 1-16/E-265-12).

(2) Claimant R. Reed be allowed twenty-nine and one-half (29½) hours' pay at his time and one-half rate and one and one-half hours' pay at his double time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Welder B. P. Spencer's regularly assigned welder helper was absent from duty because of personal illness. The Roadmaster instructed Foreman J. H. Rutland to fill this temporary vacancy as may be noted from the following quoted letter:

LETTER "A":

"B'ham, Ala.
8-22-1969

Mr. Jack Benson.

Dear Sir and Brother:

In answer to your letter of August 19, 1969 about Mr. Robert Reed claim. My Helper J. D. Harlan was off sick. The Roadmaster told the Foreman Mr. J. H. Rutland to let me have a man to help me. Robert Reed was the oldest man in his Gang, so he is the one that helped me. I do not have anything showing he was assigned to me as Welder Helper. He was just told to help me. I am giving you the dates he worked with me and got helpers rate of pay. I am giving you the straight time and overtime.

You know it is not safe to go out and work without someone to watch for you. What should a man do if he was told to go out by

forced to be absent from work due to his illness. As a result of his absence, a rank 6 employe holding seniority as a laborer in the track sub-department, was utilized in the capacity of welder helper when there was an established need. At any time that this employe was utilized in the capacity of welder hepler, he was so compensated at the welder helper rate, which is greater than that of a laborer.

On January 25, 1969, the welder worked on his assigned rest day and was paid time and one-half rate for 13 hours and 80 minutes to cut bolts and rails between Mile Post 421 and 438. Also on February 2, 1969, the welder was used on his assigned rest day and paid time and one half rate for 16 hours and double time for 1 hour and 30 minutes to cut bolts and rail from Talladega to Sylacauga, Alabama. The welder worked in conjunction with a track gamg that was replacing rail that had been found to be defective. As a result of the Carrier not utilizing the services of the laborer with the welder, the organization presented claim for the same number of hours as the welder worked, in favor of Mr. R. Reed, on the above two dates, who had on occasions, when the service demanded a helper's assistance, worked with the welder in the absence of the regularly assigned helper. He, however, did not establish seniority as a welder helper. Since no helper was required by the welder on January 25 or February 2, carrier saw no basis for the claim, and it was therefore declined. Copies of correspondence exchanged in connection with the claim are attached and identified as Carrier's Exhibits "AA" through "JJ."

There is on file with the Third Division a copy of the current working rules agreement, and it by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In its Submission to this Board, Petitioner has included documentary evidence which was not made part of the record on the property and then proceeds, in large part, to predicate its arguments on such documents in an effort to "mend its hold" by enlarging on the issues raised on the property. We have repeatedly and uniformly held that this Board is without jurisdiction to consider such documents and arguments.

As is evidenced by the first paragraph of the claim as presented on the property on February 21, 1969, — and thereafter adhered to throughout the handling on the property — the sole premise of the claim is: "Mr. Reed (Claimant) was relieving Welder Helper J. D. Harland at this time account of Mr. Harland being off sick." (Emphasis ours.)

Claimant held no seniority in the welding sub-department. Carrier denies he was relieving Welder Helper Harland. Petitioner — who bore the burden of proof as to the factual issue thus raised — failed to adduce evidence of probative value on the property to satisfy its burden. We, therefore, will deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this disptue 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.

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