

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20417  
Docket Number MW-20231

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Northwestern Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it used Extra Gang Foreman H. M. Hyden instead of Lead Welder M. Sanchez to perform welding work in the vicinity of Mile Posts 38 and 39 (Petaluma) on June 11, 16, 28, 29, 30, July 1, 2 and 6, 1971 (System File NWP MofW 152-748).

(2) Extra Gang Foreman H. M. Hyden be allowed the difference between what he would have received as welder and what he was paid as extra gang foreman for each day referred to in Part (1) hereof.

(3) Lead Welder M. Sanchez be allowed eight (8) hours' pay at his straight time rate for each day referred to in Part (1) hereof.

OPINION OF BOARD: This dispute involves the assignment of Claimant Hyden, an Extra Gang Foreman, to do thermal welding on rail ends on eight days in June and July of 1971. For this work Claimant Hyden received the rate of pay applicable to his position as Extra Gang Foreman. Petitioner alleges that Claimant Hyden was not paid properly as he should have been compensated at the Welder's rate of pay and further that Claimant Sanchez, who held seniority as a Welder, should have been assigned to perform the welding.

Both parties agree that Claimant Hyden was improperly compensated and should receive the difference between his rate of pay and that of the welder, as provided by Rule 45. That rule provides:

"RULE 45.

When an assigned employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of an employee receiving a lower rate, his rate shall not be changed."

In support of its position with respect to Claimant Sanchez, Petitioner cites Rules 2, 3, 4, and 7. The rules cited relate to rates of pay, classifications and seniority. It is argued by the Organization that welding work belongs to the welding classification and that in this case the primary issue is that welding work was performed by an employee who had never established seniority in the welding classification. It is contended that under Rule 19 seniority rosters are maintained by classes in each group of a sub-department and hence welders are quite separate and apart in a special class from that of an extra gang foreman.

Carrier's position with respect to Claimant Sanchez is persuasive. Carrier alleges that there is nothing in the rules cited by Petitioner which precludes an extra gang foreman from performing thermal welding as part of his duties when necessary. Carrier states that foremen have traditionally been performing this work on the Carrier's property. Although there was a general denial of Carrier's position, no contrary evidence was furnished by Petitioner with respect to this practice.

The crux of the dispute is whether welding work is either contractually or by past practice reserved to welders alone. There is no evidence with respect to past practice. As to the contractual rights, we have repeatedly held that rules listing positions per se are not work reservation rules (see Awards 19921, 19922, 18876, 17421 and many others). With respect to the seniority rules, it is quite clear that seniority rights can only be considered when the right to perform the work is established (Award 15943 and 17943). Since this record is devoid of evidence or rule support to establish Claimant Sanchez's right to the welding work in question, his claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Part (2) of the Claim is sustained. Parts (1) and (3)  
are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.