

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22421
Docket Number CL-22400

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8494) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Savanna, Illinois in Seniority District No. 116, when it established positions at the new Rail Mill facility and assigned employees of another class or craft; namely, BMW Employees, to perform Material Department work properly falling within the scope and application of the Clerks' Agreement.

2) Carrier shall be required to bulletin the positions established to employees in Seniority District No. 116 at the rates of pay established by agreement between the parties.

3) Carrier shall be required to compensate the successful applicants the difference in the rates of pay between what they would have earned had these positions been bulletined in accordance with the Rules Agreement, and the position held, retroactive sixty (60) days from the date of this claim, and for all subsequent days until the violation is corrected and the positions are bulletined and assigned in line with the provisions of the Clerks' Rules Agreement.

4) Carrier shall be required to compensate any other person who might not be entitled to compensation as provided for in Item 3 above but obtains one of the positions established, eight (8) hours pay at the rate of the position to which assigned, for each workday, retroactive sixty (60) days from the date of this claim and for all subsequent days until the violation is corrected.

5) The respective individual claimants entitled to compensation herein claimed shall be determined by a joint check of the Carrier's records.

OPINION OF BOARD: This Board has carefully reviewed Carrier's numerous procedural objections and finds that the case is properly before us. While we agree with Carrier that some aspects of petitioner's claim are somewhat vague in part, we do not believe that the claim on the whole is technically impaired.

In this dispute, the Organization contends that Carrier violated the Agreement, particularly the Scope Rule sections 1(a) and (f) thereof, when it assigned Maintenance of Way forces to perform work in connection with the operation of a rail mill or facility, which it argues belongs to them.

It averred that prior to June 13, 1950, when the Rail Mill operations which is now located at Tomah, Wisconsin, was based at Savanna, Illinois, that all work, including the loading and unloading of rail, in relation to this mill was performed by its members.

It noted the significance and relevancy of the June 13, 1950 Memorandum of Agreement, which is referenced in pertinent part hereinafter and asserted that the present rail operation, irrespective of whether it is called "new, movable," or "one of a kind" is nevertheless a Rail Mill.

Paragraph 6 reads:

"Should the operations of the Rail Mill, or any of the work in connection therewith, be returned to Savanna, employees shown on Seniority Roster No. 136 - as of January 1st, 1950 - who are then in the employ of the Carrier on positions within the scope of the Clerks' Agreement or retaining seniority under that agreement by reason of leave of absence, will be given prior right to that work."

The Organization concluded that it had amply demonstrated by custom, practice, usage and Agreement coverage that the contested work exclusively accrued to the Clerks and that the Maintenance of Way's opposite contentions and affirmations did not disclose that they performed this work elsewhere.

Carrier, on the other hand, contends that there was no specific evidence adduced showing that the Stores Department employees loaded and unloaded welded rail at the old Savanna Rail Mill and that the June 13, 1950 Memorandum of Agreement (supra) only applied to work that was transferred to the Tomah situs. Since the present operation is new and distinguishable, Carrier argues that Paragraph 6 is inapplicable.

It specifically emphasized that welded rail is immediately loaded on a special train as part of the rail welding process and that this precise type of work was not performed by the Clerks at the Savanna Mill prior to June 13, 1950 or at Tomah, Wisconsin. It cited the pertinent acknowledgments in the Maintenance of Way's submission that the loading and unloading of rail was inextricably linked to the rail welding process and thus this work was covered by that craft's agreement. It noted that the Scope Rule only listed positions, not work, and that the Organization didn't prove that the loading and unloading of rail exclusively accrued to its members.

The pivotal questions raised in this dispute are:

1. Is the present facility operationally distinguishable from the pre June 13, 1950 Savanna Rail Mill or the present Tomah, Wisconsin operation that the loading or unloading of welded rail is integrally related to the welding process?
2. Does the loading and unloading of rail, welded or otherwise, exclusively belong to the Clerks?

Based on our analysis of the detailed record submitted, we must initially conclude that the June 13, 1950 Memorandum of Agreement is inapplicable herein, since it only applies to work that is located at Tomah, Wisconsin.

The disputed work was not transferred from Tomah to Savanna, but was created de novo as a result of the new rail welding operation. We do not find after examining the work particulars of the old Savanna Rail Mill or the Tomah operation, that the present facility is identical or closely similar to them, since the operational steps and processes are different.

The pre 1950 Savanna and Tomah operations primarily relate to the storage of rail and integrally interface with such Clerks' functions as sorting, storage, record keeping, future dispatchment, etc.

Moreover, while the evidence does not explicitly show that the Clerks loaded or unloaded welded rail, they did load or unload rail in connection with their prime purpose.

X-1
In the instant dispute, the present Savanna facility is operationally dissimilar. The work of welding rail is encompassed within the Maintenance of Way employees' Scope Rule and was assigned by mutual agreement to an outside company. The work incidental and facilitative of welding rail, such as loading and unloading welded rail was retained for the Maintenance of Way forces. Since this work is clearly an integral part of the total welding rail process, it accrues in this sequential task relationship to the Maintenance of Way employees. We find no evidence that the Clerks' Agreement or its history and practice precludes the performance of this work in connection with work that is not primarily Clerks' work.

X-2
In this situation, rail was unloaded from railroad cars onto the welding supply rack. It was not stored in a stationary depository for future shipment, but was continuously processed until it was loaded as finished welded rail on to a rail train. It was integrally related to a major function that contractually belonged to the Maintenance of Way forces.

X-3
This Board has consistently held that the purpose for which work is performed determines the craft. The purpose of work in this instance was the welding of rail. The loading and unloading of rail was a necessary and important concomitant of an integrated process.

Since we have determined that the old Savanna and Tomah operations are different from the present Savanna facility and that the Organization hasn't successfully rebutted the Maintenance of Way's assertions that such work integrally relates to the welding rail process and thus belongs to Maintenance of Way employees, we 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 dispute 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.