

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24108
Docket Number SG-23790

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pacific Electric Railway Company:

(a) The Southern Pacific Transportation Company (former Pacific Electric Railway Company) violated the Agreement effective September 1, 1949, between the Company and the employees of the Engineering Department represented by the Brotherhood of Railroad Signalmen and particularly the Scope and Rule 8 of Article I.

(b) The claimants (L. Burns, L. Sirus, H. Elizarraras, S. Kazimierski) each be allowed additional compensation for eight hours at their respective pro rata rates on the dates of March 26, 27 and 28, 1979." (Carrier file: SIG 148-290)

OPINION OF BOARD: This claim arises from Carrier's failure to assign certain welding work to Claimants on March 26, 27 and 28, 1979. Instead, the work in question was assigned to Welders represented by the Brotherhood of Maintenance of Way Employees on those days.

As a result of the merger of the Pacific Electric Railway Company into the Pacific Lines of the Southern Pacific Company, the parties to this dispute entered into a "Merger Agreement" on August 24, 1978. That agreement provided, in relevant part, for the elimination, by attrition, of Bonders and Welders (later reclassified as Welders) of the former Pacific Electric Railway Company represented by the Organization. While the reclassified welders could continue to be assigned welding work with Carrier, and would continue to be represented by the Organization, other welding assignments would be filled by Southern Pacific Company's welders who are represented by the Brotherhood of Maintenance of Way Employees.

The Organization and Carrier codified this arrangement by agreeing to Section 7 of the Merger Agreement. That section reads, in relevant part:

"(c) Welders working under the remnant Pacific Electric-Brotherhood of Railroad Signalmen Agreement will perform welding work in the former Pacific Electric territory and will also perform welding work at the direction of the Company in the Greater Los Angeles area.

(d) In connection with (c) above, it is understood that System Maintenance of Way Welders working under the Southern Pacific-Brotherhood of Maintenance of Way Agreement may be used to augment and fill vacancies on former Pacific Electric welding positions."

The Organization contends that Section 7(c) requires that all Pacific Electric welding work must be given to Pacific Electric welders. Thus, Claimants should have performed the work.

In the Organization's view, Section 7(d) is not an exception to Section 7(c). Rather, it merely provides that where additional welding vacancies occur, they may be given to Southern Pacific Maintenance of Way welders. Here, according to the Organization, additional work rather than vacancies is at issue. Thus, Claimants, all Pacific Electric welders under the Merger Agreement, were improperly denied the opportunity to perform welding work on March 26, 27 and 28, 1979. The Organization seeks eight hours compensation for L. Burns, L. Sirrus, H. Elizarraras and S. Kamimierski at their respective pro rata rates on the dates in question.

Carrier, in defense of its position, raises a number of procedural issues. First, it argues that Maintenance of Way Department employes should be notified and given an opportunity to appear before this Board before a decision is rendered.

Second, Carrier contends that Claimants H. Elizarraras and S. Kazimierski were not welders under the "remnant Pacific Electric-Brotherhood of Railroad Signalmen Agreement" (as specified in Section 7(c) at the time this claim arose). As such, Carrier argues that they are not entitled to any relief.

As to the merits, Carrier maintains that Section 7(d) specifically permitted it to use Maintenance of Way welders to augment Pacific Electric Welders in the performance of their work. Here, the Pacific Electric Welding work force was enlarged by Maintenance of Way welding work force.

In addition, Claimants Burns and Sirrus were assigned welding work on the dates in question, in accordance with Section 7(c). Claimants Elizarraras and Kazimierski were unavailable for welding work on those dates. Thus, in Carrier's view, it has fully complied with both 7(c) and 7(d) by assigning Maintenance of Way Employees to perform welding work on March 27, 28 and 29, 1979. Therefore, it asks that the claim be denied.

The crux of this claim centers on the impact of Section 7(d) on the work of Pacific Electric welders. If 7(d) simply referred to the filling of vacancies, this claim might well be sustained. However, Section 7(d) also states that the augmenting of (welding) vacancies may be filled by Maintenance of Way welders. While enlarging or increasing (augmenting) a vacancy may appear incongruous, it is apparent that it is the work of the welders which is being augmented. Otherwise, how else may a vacancy be augmented?

This is particularly true when we examine the purpose of Sections 7(c) and 7(d). They were agreed upon to allow welders represented by the Organization to continue to perform welding work despite the merger of the Pacific Electric Company into the Southern Pacific Company. In fact, the record evidence indicates that on the dates in question all available Pacific Electric welders were performing welding work for Carrier, in compliance with Section 7(c). Simply stated, Section 7(d), expressly permitted Carrier to assign welding work to Maintenance of Way welders, since available Pacific Electric welders were engaged in welding work on the dates in question.

We will deny the claim in its entirety.

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 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

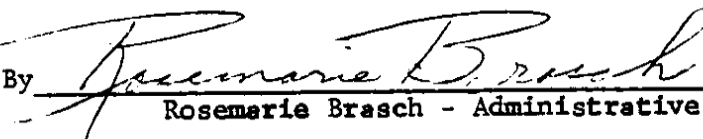
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.