NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25139
THIRD DIVISION Docket Number MW-23978

Wesley A. Wildman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation
(Formerly The New York, New Haven & Hartford Railroad Company)

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

(1) The Agreement was violated when, on April 9, 1978, Track Laborer W. Jones was used to perform track welder's work in connection with a derailment at Hartford, Connecticut (System Docket No. NH-15).

(2) Because of the aforesaid violation, Track Welder Marc Belliveau shall be allowed ten and one-half (10-1/2) hours of pay at his time and one-half rate.

OPINION OF BOARD: This case arises out of the fact that a track laborer did what was evidently a nearly de minimis amount of acetylene torch rail cutting and bolt burning as a part of track gang work performed on a derailment. Claimant here, the senior available Track Welder, asserts that the work done by the laborer was welder's work, reserved exclusively to that classification by Classification Rule 53 in the Agreement between the parties, and that, accordingly, Claimant should have been called out to perform the task on overtime.

A virtually identical set of facts involving the same Carrier and Organization has previously been before this Board (Award No. 21843, Third Division). In that case the Board, noting that "... (t)his Board has consistently held that classification of work rules, such as Rule 53, do not reserve work exclusively to the job classifications enumerated therein..." held that "... Rule 53 does not reserve the work of cutting rails exclusively to Track Welders as claimed by the Organization...". Accordingly, the Board denied the claim. Not finding this prior decision of this Board to be palpably arbitrary or erroneous, we reaffirm it here.

The Organization asserts that what distinguishes this from the prior case is what it alleges to be its timely "on the property" claim of violation of Rule 26(a) of the Agreement, the so-called "unassigned day rule", which speaks, inter alia, to circumstances under which a "regular employee" may be entitled to perform (perhaps on overtime) work normally done by that employe. Carrier denies that Rule 26(a) was invoked in a timely fashion "on the property" and claims that it is not properly before the Board in this case.

Without deciding whether Rule 26(a) is appropriately before us or not, we would simply observe that were we to find that it was properly invoked, it could not be dispositive of this case for there is no evidence on the record before us which would allow us to make any finding whatsoever on the relationship between the disputed cutting and burning work done by the laborer in this instance and the language of Rule 26(a).

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.