

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27979
Docket No. MW-26791
89-3-85-3-548

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned Welding Department forces (Welding Force 1170) instead of Track Department forces to perform track maintenance work on the New River Sub-division on August 27, 28, 29 and September 6, 1984 (System File C-TC-2496/MG-4903).

(2) Because of the aforesaid violation, Foreman Dan Harrah and the senior member of his force shall be allowed one hundred four (104) hours of pay each at their respective rates."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In the instant claim the Organization alleges that the Carrier used welding forces on four (4) different dates to do trackmen's work in violation of various Rules of the Agreement, particularly Rules 1, 2 and 3 dealing with Scope, Seniority and Seniority Rosters, and Rule 66 dealing with Classification. In denying the claim the Carrier states that the welders were not able to perform their welding duties on the dates in question because of weather conditions and they were, therefore, properly assigned to assist track forces. The Carrier also cites Rule 59, the Composite Service Rule, as justification for denying the claim.

The issue here centers on whether the welding forces were substituting for track forces and/or whether they were supplementing track forces because they were unable to do their own work for the relatively short period of time in question. It is axiomatic that if they were doing the former the claim must be viewed in the context of a potential infraction of the Scope and Seniority Rules cited by the Organization, if the latter, justification for the actions by the Carrier can be found under aegis of de minimus doctrine (See Third Division Awards 20311, 23355; Fourth Division Awards 1486, 2122, 3168; also Third Division Award 14321 for the distinction between supplementing and substituting work). A review of the record fails to warrant the conclusion that substitution was taking place. The Carrier's contention in its March 21, 1985 letter to the General Chairman that the "welders were not able to perform their welding duties" on the days in question is not sufficiently disputed by the Organization on property. The Carrier was not constrained by any Agreement Rule cited by the Organization from assigning welders, in supplementary manner only, to assist track forces. The record shows that this is what the Carrier did. The Carrier references Rule 59 to justify its actions. Such is inappropriate, however, as the Organization correctly argues. Rule 59 only deals with compensation and related issues when an employee is "required to fill the place of another...receiving a higher rate of pay..." and so on.-

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 29th day of June 1989.