

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(Formerly The Chesapeake and Ohio Railway Company)

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

(1) The Agreement was violated when the Carrier assigned Welding Group employees instead of Trackman J. Brasfield to perform trackmen's work on September 24, October 6, 7 and 9, 1987 [System Files C-TC-4009/12(87-1250) and C-TC-4020/12(88-31)].

(2) As a consequence of the aforesaid violations, Mr. J. Brasfield shall be allowed thirty-two (32) hours of pay at his pro rata trackman's rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On each of the four dates of Claim, the Organization alleges the Carrier used welding employees to perform eight (8) hours of track maintenance work which did not involve welding. The Organization asserts such work was in violation of Rules 1 and 2 regarding seniority, Rule 5 regarding the recall of furloughed employees and Rule 59 regarding the classification of work.

The Carrier maintains it is privileged to use welders and/or welder helpers to assist trackmen when they are not otherwise occupied in the performance of welding duties. In support of its position, the Carrier relies upon Rule 47, the composite service Rule, as well as Rule 59(a), which reads as follows:

"Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the railway. Classification of employees and classification of work, as has been established in the past, is recognized."

This Board has already addressed the issue in this case in Third Division Award 27979 between these parties. In that dispute, the Board held:

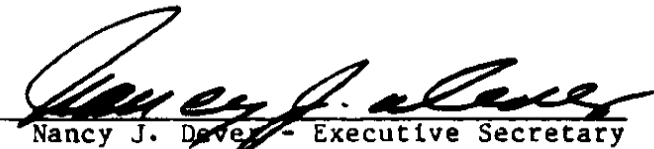
"The issue here centers on whether the welding forces were substituted for track forces and/or whether they were supplementing track forces because they were unable to do their own work for the relatively short period of time in question. It is axiomatic that if they were doing the former the claim must 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 in this case fails to support a conclusion that the Carrier utilized the welding employees as substitutes for track forces. The Carrier has alleged there was no welding work to be performed, and the Organization has not disputed this. Further, the Organization offered no evidence which would lead the Board to conclude additional trackmen would have been required had the welders been unavailable. As this Board held in Third Division Award 27979, the Carrier was not constrained by any Agreement Rule cited by the Organization from assigning welders, in supplementary manner only, to assist track forces.

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 28th day of February 1991.