

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29582
Docket No. MW-28847
93-3-89-3-219

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Structural Welder D. D. DeWeese to perform B&B mechanic's work in the Columbus, Ohio area on January 11, 12, 14, 15, 18, 19, February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 24, 25, 26, 29, March 1, 2, 3, 4 and 7, 1988 and continuing (System Docket CR-3757).

(2) As a consequence of the aforesaid violation, furloughed B&B Mechanic J. R. Engel shall be allowed eight (8) hours of pay at the B&B mechanic's rate for each day Welder D. D. DeWeese performs B&B mechanic's work beginning January 11, 1988 and continuing until the violation is corrected."

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 employe 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 March 8, 1988, the Organization filed a claim on behalf of a furloughed B&B Mechanic. The claim alleged that the Carrier used a Structural Welder to perform mechanic's work on various dates in January, February, and March, 1988.

The Carrier denied the claim. The Organization appealed the claim presenting a statement from the Welder allegedly in support of the Organization's claim. The Carrier denied the claim contending that the statement did not support the Organization's claim but indeed was at variance with the allegations.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement. Therefore, the claim must be denied.

Paragraph Four of the Scope Rule reads:

"The listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification. The listing of a given classification is not intended to assign work exclusively of that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement."

As stated in Third Division Award 26761:

"Rule 1 refers to "primary duties," not exclusive duties, of each classification. The Fourth Paragraph is obviously designed to allow some leeway among classifications which might not otherwise be clearly provided."

Moreover, it is stated in Award 22 of PLB No. 3781:

"The last two sentences of the quoted portion of the Scope Rule clearly declares that the Rule 1 listing of classifications is not intended to secure work "exclusively" to any listed classification and that employees in one classification may perform work of another classification...."

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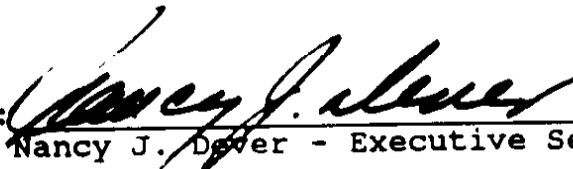
Although the Welder states in his statement that he performed work which was not welding work on the dates in question, the Organization has still not met its burden that the Rule was violated. Therefore, the claim must be denied.

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 March 1993.