

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29957
Docket No. MW-29948
93-3-91-3-334

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when the Carrier assigned Crane Operator G. L. Peterson and Front End Loader Operator A. G. Pelischek instead of Welder Helper J. J. Tarasewicz to perform welder helper's work at West Yard in Milwaukee, Wisconsin on January 6 and 7, 1990 (System File C #08-90/800-46-B-363 CMP).
- (2) As a consequence of the aforesaid violation, Mr. J. J. Tarasewicz shall be allowed seventeen (17) hours of pay at the welder helper's time and one-half 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 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.

This Claim was filed after a Crane Operator and a Front End Loader Operator assisted a Lead Welder in the performance of his duties at the West Yard on January 6 and 7, 1990.

The Organization contends that Claimant, a Welder Helper, should have been called to assist in the performance of the duties related to the welding operation.

The applicable provision of the Agreement read in pertinent part as follows:

"Rule 1 - SCOPE

The rules contained herein shall govern the hours of service, working conditions, and rates of pay of the employees in the Maintenance of Way & Structures Department represented by the Brotherhood of Maintenance of Way Employees but do not apply to supervisory forces above the rank of foreman. These rules do not apply to employees covered by other agreements.

Rule 46 - Classification

- (m) An employee assigned to the operation of any welding device used in repairing rails, hardening rail ends, repairing frogs and switches, bridge welding, and such other welding in the Maintenance of Way Department, will be designated as a maintenance of way welder.
- (n) An employee assigned to the operation of any grinding device used in the performance of work described in section (m) of this rule will be designated as a maintenance of way grinder.
- (o) An employee designed to assist the respective mechanics referred to in this rule will be designated as a helper."

In Third Division Award 26674, between the parties, the Board held as follows in a similar situation:

"The Board after examining the record, has found no evidence to counter Carrier's assertion that it has been a long-standing practice for train crews to clean snow from switches. In addition, there is no evidence to establish that the work is exclusively reserved to Sectionmen, by either practice or rule. The reasoning in Third Division Award 21495 is directly applicable to this dispute and is controlling:

'We have previously held that when there is a jurisdictional question between employees of

the same craft, represented by the same Organization, the burden of establishing the exclusive right to the work in question is even more heavily on Petitioner; see Awards 13083, 13198 and 20425. In this dispute the key question is not only whether the work should have been performed by an hourly rated employe but also whether it indeed was work reserved to the craft under the Agreement. There is no persuasive evidence on either point in this record and therefore the claim must be denied."

We concur with these previous Awards and will accordingly deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.