

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31212
Docket No. MW-31637
95-3-93-3-655

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned either Track Subdepartment employees, a car inspector or a roadmaster to perform work of the Welding Subdepartment, i.e., the cutting of rail, bolts and other track material with a cutting torch, on dates from July 1 through August 31, 1992 [System File 9(24) (92)/12(93-0004) LNR].
- (2) As a consequence of the violation referred to in Part(1) above, Welder W.K. Kelley shall now be allowed one hundred twenty-three (123) hours pay at his straight time rate of pay and twenty (20) hours pay at his overtime rate of pay".

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 employee 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.

As Third Party in Interest, the Brotherhood of Railway Carmen Division of the Transportation Communications International Union was advised of the pendency of this dispute, but elected not to file a Submission.

The Carrier had an AFE Gang assigned to replace or repair rails, frogs, switch points, etc. This claim was filed on behalf of a Welder contending someone in the gang other than a Welder was using a cutting torch on various dates.

The Carrier's response was that from time to time and on a limited basis (i.e., one hour per specific dates as opposed to the five or six hours per date claimed) a cutting torch was used to perform work incidental to the primary assignment.

Granted, a welding torch and a cutting torch may be very similar. But in the lexicon of Section 3 Awards, it is not the tool that governs the classification of employee using same, it is the nature of the work that is being preformed. See Third Division Award 28037.

No welding was done, only cutting work incidental to the primary work of replacing or repairing rail, frogs, switch points, etc.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.