

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31383
Docket No. MW-31811
96-3-94-3-100

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
(Consolidated Rail Corporation)

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

- (1) The Agreement was violated when the Carrier assigned Welder Foreman J.F. Hufford to perform pre-arranged overtime service performing welder's work on the South Fork Secondary Track on October 1, 5, 6, 7, 8, 26, 27, 28 and 29, 1992 and continuing, instead of assigning senior Welder R.J. Sida to perform said work (System Docket MW-2806).
- (2) As a consequence of the violation referred to in Part(1) above, Welder R.J. Sida shall be allowed thirty-two and one-half (32.5) hours' pay, as of October 29, 1992 and continuing, at the welder's overtime rate for all wage loss suffered as a result of Mr. Hufford performing welder's work and he shall be credited with all benefits associated thereto."

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.

Claimant holds rights as a Welder and as of the claim dates, was assigned and working as a welder.

The junior Employee (in-so-far as concerns Welder's seniority) has Welder-Foreman's seniority and as of the claim dates was assigned to and was working as a Welder-Foreman, however, he was a one man gang.

On the claim dates, the Foreman worked, by himself, as he did during the straight time hours, performing the work of a Welder. It is the Organization's position that Claimant, being the senior Welder, should have been used during the overtime hours to perform the welding work.

It is to be noted that as far as this Board is aware, no work has been performed on a rest day of either of the two involved with this dispute, but rather, it is overtime work performed continuous with a regular work day.

After a thorough review of the matter, it is this Board's opinion that this claim must fail and this is so for several reasons.

From the outset, no Rule has been cited that precludes a Foreman from working and secondly, the bulletined duties of the Foreman's position reiterates what is stated in Rule 1 D.1 which reads:

- "D. Structural Welding Roster:
1. Structural Welder Foreman. Direct and work with employees assigned under his jurisdiction."
(underscoring added).

If the Agreement language contemplates a Welder Foreman working with employees, then obviously, the Foreman is expected by the language of the Agreement, to perform actual physical work even if he is working alone.

The claim is denied. The burden of proof necessary to achieve a sustaining opinion is not evident in this dispute.

AWARD

Claim denied.

Form 1
Page 3

Award No. 31383
Docket No. MW-31811
96-3-94-3-100

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 29th day of February 1996.