

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32522
Docket No. MW-31610
98-3-93-3-621

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Holland Company) to perform welding work (in-track field welds) beginning near Junction City, Georgia at Mile Post ANB 763.2 on the Fitzgerald Subdivision of the Atlanta Division beginning March 24 and continuing until the close of work on May 7, 1992 [System File 92-70/12(92-858) SSY].
- (2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants* listed below, who all hold seniority in the Welding Subdepartment, Group A, shall each be allowed pay at their appropriate pro-rata rates of pay for an equal proportionate share of the seven hundred seventy-nine and one-half (779.5) man-hours expended by the outside forces in the performance of the subject work.

*V. H. McCrary
J. D. Singleton
W. K. Wright
W. H. Alexander

T. C. Whittley
G. E. Reaves, Jr.
S. N. Pennington
L. Harbuck, Jr.

W. B. Wilson
J. S. Hodges
E. D. Griffin
J. D. Simmons, Jr.

J. W. Reeves, Jr.
C. D. Coleman
D. H. Summer"

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 were given due notice of hearing thereon.

This case involves a claim by the Organization that Carrier violated the Agreement when its assigned outside forces, the Holland Company, to perform welding work, i.e., in-track welds on the Fitzgerald Subdivision, beginning at approximately Mile Post ANB 763.2 and working beyond Mile Post ANB 784.4 during the period of March 25 through May 7, 1992. The Organization insists that this work belongs to Carrier's Group A Welders. Claimants are the individuals who have established and hold seniority in the Welding Subdepartment, Group A, on the Fitzgerald Subdivision of the Atlanta Division.

Carrier, on the other hand, insists that it did not violate the Agreement. It notes that Rule 1 - Scope does not describe the work covered by the Agreement, but simply lists the various workers covered. In Carrier's view, the Scope Rule does not make the work exclusive to the Claimants. Thus, Carrier asserts that the actual work in question (operation of an automated flash-butt welding machine) falls outside the Scope of the Agreement. Carrier also urges that the Organization failed to refute its assertion that Claimants lack the necessary skills to operate the machine in question.

Finally, Carrier contends that Claimants were not monetarily damaged on the respective dates on which the claim was made and, therefore, they are not entitled to the compensation being sought herein. Carrier notes that it is not disputed that Claimants

were on duty and under pay during the times the Organization alleges contract violations occurred. Carrier indicates that Group A Welding Subdepartment employees, like the Claimants, have the right to perform the work in question.

The record evidence demonstrates that the type of work involved here has traditionally, customarily and historically been performed by Carrier's Maintenance of Way Instructional Department Employees with the use of equipment owned or possessed by the Carrier. Rule 23 is specifically on point. It states, in relevant part:

"RULE 23

WORK ASSIGNMENTS - WELDING

Section 1

(a) All work generally recognized as Maintenance of Way welding work except, as specifically provided in Rule 5, will be considered as being in Group A, Welding Subdepartment and will be performed by employees holding seniority therein. The work to be performed by Welding Subdepartment employees includes, but is not limited to, that involved in the electric arc and/or acetylene method of welding and cutting of rails, frogs, switches, guard rails, crossovers, etc., and in the making of field and plant welds.

(b) Operation of Rail Grinders will be confined to the Welding Subdepartment and will be operated by welder helpers."

The language of this Rule is clear and unambiguous. It clearly provides that all work recognized as Maintenance of Way welding work would be considered as being in Group A Welding Subdepartment and will be performed by employees holding seniority therein. This work includes, but is not limited to, that involved in the electric arc and/or acetylene method of welding and the making of field welds. Thus, it is clear that the making of field welds is not limited to the method of welding, and is to be performed by employees holding seniority in Group A of the Welding Subdepartment.

Also, Rule 2 - Contracting indicates that work is to be performed by employees subject to the Agreement, except "it is recognized that, in specific instances, some work that is to be performed requires special skills not possessed by the employees and the use

of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed." Here, it is undisputed that Carrier never met with the General Chairman to confer and reach an understanding setting forth the conditions for contracting out the work. Moreover, on the property there was no dispute whatsoever that Carrier possessed the equipment to perform the work in question and that the Claimants possessed the requisite skills and ability to do the work.

We must also note that it is unrefuted on the property that Carrier had purchased similar equipment which was used on this job previously. Because this assertion was not contested, we must conclude that Carrier did have the necessary equipment in question.

In all, we conclude that Carrier's assignment of the work in dispute to outside forces violated Rule 23 of the Agreement. We direct that the claim be paid as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1998.