

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35421
Docket No. MW-32874
01-3-96-3-214**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 Agreement was violated when the Carrier assigned junior employee D. J. Resch to perform overtime service on a broken rail at Mile Post 244.4 on the Pittsburgh Line on January 7, 1995, instead of assigning the senior employee, Mr. R. F. Kent (System Docket MW-3713).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. R. F. Kent shall be compensated for five (5) hours' pay at the welder's time and one-half rate with credit for the day for benefits and vacation purposes.”

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.

The material facts that led to this claim are not in dispute. At approximately 7:30 P.M. on January 7, 1995, a broken rail was reported at Mile Post 244.4 on the Pittsburgh Line. The Carrier used Welder D. J. Resch to repair the broken rail which required welding rail ends. He was compensated five hours of overtime for the work. Mr. Resch's regular job involved Orgotherm welding.

On or about January 13, 1995, a claim was filed on behalf of the Claimant, a Frog Welder on the Pittsburgh Line. The Claimant is senior to D. J. Resch on the welder seniority roster. It is the Organization's position that there is no contractual distinction between a "Frog Welder" and an "Orgotherm Welder." Both positions are in the welder class and are on the same welder seniority roster. Therefore, according to the Organization, the Claimant should have been assigned to repair the broken rail on January 7 and 8, 1995, since he was senior to employee D. J. Resch.

On this property, preference is given to employees who ordinarily and customarily perform the work during the course of their workweek or workday under Rule 17. Rule 17 requires the Carrier to give preference for overtime work to employees in the order of their seniority if the senior employee is qualified and available for the work.

The Carrier has convinced the Board that the correct employee was assigned to repair the broken rail at Mile Post 244.4 on the Pittsburgh Line on January 7 and 8, 1995. We are persuaded from the evidence before us that there is a material distinction between "Frog Welding" and "Orgotherm Welding." They involve two separate and distinct techniques.

It is noteworthy that a Frog Welder uses an electric arc welder in the performance of his duties. However, an Orgotherm Welder does not use an electric arc welder to repair broken rails. Rather, he builds a mold between the rail ends then pours a molten mixture into the mold. Once the molten mixture solidifies the mold is removed and the remaining weld is ground flush with the rail by using a rail grinder.

Inasmuch as Welder D. J. Resch ordinarily and customarily performed Orgotherm Welding during his workweek the Carrier had the right to assign him to repair the broken rail at Mile Post 244.4. This repair required the Claimant to weld rail ends, a task he ordinarily and customarily performed during his workweek.

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Consequently, assignment of D. J. Resch to perform this overtime work did not violate Rule 17 and the claim must be denied as a result.

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 26th day of April, 2001.