

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36073
Docket No. MW-35726
02-3-99-3-704**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Duluth, Missabe and Iron Range Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Missabe Seniority District Welders R. Jussila and J. Zeills to perform routine welding work at locations on the Iron Range Seniority District on August 4, 5, 6 and 7, 1998, to the exclusion of Iron Range Welders B. Croft, D. Setniker, T. Koehler and G. Libal (Claim No. 23-98).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimants D. Croft, D. Setniker, T. Koehler and G. Libal shall now each be compensated for a proportionate share of the sixty-four (64) straight time hours and thirty (30) overtime hours incurred by Welders Jussila and Zeills in performing the aforesaid work at their respective straight time rates of pay and at their respective time and one-half rates 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 were given due notice of hearing thereon.

There is no dispute about the events giving rise to this claim. On August 27, 1998, the Organization filed a claim contending that the Carrier violated the seniority and overtime provisions of the Agreement by assigning employees from the Missabe Division Track Department to perform welding work on the Iron Range territory during the period August 4 through 6, 1998.

The Carrier declined the claim, taking the position that the employees were properly assigned in accordance with the Agreement and in particular the following provision:

“Rule 2(D) (5):

When all employees holding prior rights in a sub-department are working or are able to hold an assignment in such sub-department, employees in that sub-department may be used across divisional boundaries.”

In its September 19, 1998 appeal, the Organization contended that Rule 2(D) (5) applied only in emergency situations. In this case, the Organization asserted, there were division Welders available to do the work, and therefore no emergency existed. The Organization subsequently restated its position in its appeal to the Carrier's highest designated Officer on October 16, 1998 and in addition it argued that “Rule 2 was set up so where there is full employment in the subdepartment, employees may be used across divisional boundaries, supporting a crew that needed help.” Because the Iron Range Welders were capable of completing the work, there was no reason to have the Missabe Welders doing work on the Iron Range Division, the Organization asserted.

The Board recognizes that there are many Awards that uphold the general principle that work within a specific seniority district must be reserved for employees holding seniority in that district. See, e.g., Third Division Awards 32763, 32993. However, the plain language of this Agreement compels the conclusion that the parties here bargained for something different. Rule 2(D) (5) clearly permits the Carrier to assign employees across divisional boundaries provided there is full employment in the sub-department. There is no other language of limitation preventing the Carrier from

assigning employees across divisional boundaries, notwithstanding the Organization's contention that emergency or other exigent circumstances must be present.

Our conclusion in this regard is bolstered by the language of Rule 2 as a whole. Under well-established principles of contract interpretation, if specific language in an agreement covers an issue, it will supersede other, more general language. Looking at all the subparts of Rule 2, it is clear that Section (D)(5) specifically controls. If the Organization's position were adopted, and the general seniority provisions of Rule 2 were applied, then Section 2(D)(5) would be rendered superfluous, a result plainly at odds with the requirement that agreements be interpreted to give meaning and effect to all the provisions therein.

Additional argument was raised by the Organization just prior to filing the instant case with the Board. Because it was submitted during the handling of the case on the property and the Carrier provided a response, the argument has been considered by the Board. However, it was not persuasive. The Organization's reliance upon a provision of a 1992 Agreement is misplaced because the cited Agreement language addressed bidding of Welder positions on a system wide basis. The instant claim turns on the Carrier's ability to work employees across division lines when all members of the craft are fully employed. Its right to do so is not predicated upon a system-wide bidding process. Consequently, for all the foregoing reasons, the claim must be denied.

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 18th day of June, 2002.