

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36833
Docket No. MW-36066
04-3-00-3-107

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Group 14 Idaho Division Track Welder-Arc Welder Process C. W. Sirois and Group 14 Track Welder Helper S. C. Nelson to perform thermite welding work (eliminating jointed rail and/or creating continuous welded rail) between McCammon and Michaud, Idaho, instead of Group 14 Idaho Division Rail Heat Treating-Welder Foremen J. B. Kemp, Group 14 Idaho Division Track Welder-Thermite Weld Process L. L. Eborn, Group 14 Welder Helper N. D. Pilster and Group 16 Extra Gang Laborers T. R. Murphy and T. B. Smith (System File J-9809-51/1175354).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. B. Kemp, L. L. Eborn, N. D. Pilster, T. R. Murphy and T. B. Smith shall each be paid at their respective straight time and time and one-half rates of pay for a proportionate share of the total man-hours consumed by Group 14 Track Welder-Arc Process C. W. Sirois and Group 14 Track Welder Helper S. C. Nelson, retroactive sixty (60) days from the date the claim was filed and continuing until the violation ceases, with vacation, retirement, insurance benefits and any other**

entitlement accruing thereto as if they had performed the claimed work.”

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 is a dispute over the assignment of thermite welding work (eliminating jointed rail and/or creating continuous welded rail). A similar dispute between the parties resulted in denial Third Division Award 34050:

“Evidently, the parties recognized a distinction between Arc Welding and thermite welding. However, the applicable Schedule Agreement does not expressly reserve work to either of these Group 14 Welding Gangs. Moreover, the Organization has not established that the Class (c) Track Welder-Thermite Weld Process class of employees has exclusively performed thermite welding by custom and tradition. Therefore, the Carrier has the managerial right to assign thermite welding to either Class (b) or Class (c) in Seniority Group 14 of the Track Subdepartment.

For the foregoing reasons, the Board finds that the parties' Agreement was not violated when the Carrier assigned Arc Welding Gangs to perform thermite welding on the Kenton main line in

Wyeth and Portland, Oregon. The three claims protesting this work assignment are denied as a result.”

Award 34050 is not palpably in error. That Award shall govern this case.

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 28th day of January 2004.