

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36849
Docket No. MW-36876
04-3-01-3-486

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Welding Department employes to perform Track Department work (gauging track and installing insulated joints, crossties, switch ties and frog insert) at locations in the vicinity of Manchester, Georgia beginning on January 17 through February 3, 2000 and continuing [System File B19105300/12(00-0504) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Track Department Foreman C. R. McGouirk, Assistant Foreman S. Jenkins, Assistant Foreman D. D. Callier, Trackman J. Boddie, Operator W. R. Stevenson and Foreman W. D. Dyson shall be compensated ‘... at their respective pro rata rates, for an equal proportionate share of 168 man hours expended, by the Carrier’s use of the Welding Department employees, plus at the appropriate rates for any and all additional losses suffered, as a result of the Carrier’s actions.’”

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 basic thrust of this claim is that Welding Department employees were improperly used to perform work that accrued to Track Department employees. The claim period encompasses 11 workdays and involved a variety of Track Department work functions. According to the record, little more than a total of 40 minutes was spent on four of the days actually performing Welding Department work. Some ten minutes (multiplied by two Welding Department employees) was spent each day changing out rail and installing a frog insert on January 17, 25, and 27 as well as February 3, 2000. On the other days, no welding work was done and the employees were used to perform pure Track Department work not incidental to welding duties.

Precedent between these parties recognizes a jurisdictional demarcation in Scope Rule coverage between Track Department work and Welding Department work. The decisions award compensation for wrongful cross-department utilization of Welding Department employees used to perform Track Department work. Full employment or lack of actual loss is not a bar to awarding compensation in many of the cases. See Third Division Awards 28779, 29164, 29727, 29913, 29914, 30837, and 33638. Moreover, the Organization's assertions on this record regarding the application of the Scope Rule to reserve these separate work functions to the employees of the separate departments was not effectively refuted by the Carrier on the property. Indeed, the Carrier's Chief Regional Engineer, in his initial response to the claim, conceded that the work of replacing switch ties was not within the scope of welding work. That concession applies to eight hours per day (multiplied by two Welding Department employees) on four of the claim dates.

The record establishes that on three more of the claim dates, January 18, 20, and 26, 2000, the Welding Department employees were used for nothing more than gauging track or changing an insulated joint. No welding work was performed. These work assignments are found to be violative of the Agreement on this record. January 18 and 26 were eight-hour days for one of the Welders. The other had a doctor's appointment on January 26 and did not arrive at the work site until 10:00 A.M. On January 20, both apparently left the work site at 12:30 P.M. An appropriate reduction in welder hours worked on January 20 and 26 is required to adjust for these facts.

Our review of the record reveals that the Welders were assigned to perform welding work as needed and actually did perform some welding work on the remaining claim dates. As to the remainder of their time spent performing track work incidental to their welding work, we do not find the Organization to have sustained its burden of proof to establish a violation.

In reviewing the record in this case, we note that the Carrier's Submission argument based on Rule 19, which permits temporary assignments to different classes of work within the range of an employee's ability, was not raised on the property. While it may have had a determinative application here, we disregarded it from our consideration because it was not timely advanced.

The Carrier is directed to compensate the Claimants proportionately, as requested in the Statement of Claim, for a total of 64 hours (relating to tie installation) plus Welder hours worked, to be determined, for gauging track on January 18 and 26 and changing an insulated joint on January 20, 2000.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of January 2004.