

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37669  
Docket No. MW-37327  
05-3-02-3-361

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Inspector B. M. Young to perform the duties of a welder at Mile Posts ANB 694.9 and 643.6 on November 21, 28 and 29, 2000, instead of Welder G. E. Reaves [System File B14110301/12(01-0231) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Welder G. E. Reaves shall now be compensated for thirty-two (32) hours' pay at his respective straight time rate of pay and three (3) hours' pay at his time and one-half rate 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.

The Claimant holds seniority as a Welder Helper. On the dates involved, he was regularly assigned as such within the Fitzgerald Subdivision on the Southern Region. B. M. Young holds seniority in various classes including Welder and Track Inspector. On the dates pertinent hereto, Young was regularly assigned to the position of Track Inspector headquartered at Cordele, Georgia.

The instant claim arose when welding repairs were needed and no welding force was readily available. Track Inspector Young was directed as part of his regular duties to make the repairs. On November 21, 2000, he spent approximately six hours welding fasteners at a rail crossing. On November 28 and 29, 2000, he was utilized for approximately three hours each date to make field welds in the process of replacing two insulated joints.

Pursuant to this action, the Organization submitted a claim contending that the Carrier violated the Agreement when it assigned Track Inspector Young, instead of the Claimant, to perform welding work when the Claimant properly should have been assigned the work. As a result of this alleged violation, the Organization requested that the Claimant be paid 32 hours straight time and three hours overtime. According to the Organization, welding has historically been performed by Welders. In addition, the Organization claims that the Carrier cannot rebut the Organization's prima facie case.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the work was properly performed by Track Inspector Young. It contends that Track Inspector Young held seniority as a Welder and was therefore qualified to perform the work. In addition, the Carrier contends that there is no evidence to suggest that the work in question was exclusive to Welders or that it was performed on a continuing basis. The Carrier further contends that the Claimant was unavailable for the work in dispute because he was 150 miles away and it would have been highly impractical to transport him in order to perform this limited amount of welding. The Carrier also contends that both classes of employees (Track Inspector and Welder) are members of the same craft. According to the Carrier, the Board has repeatedly pointed out

that the burden of proof is even more heavily placed on the Organization when employees from the same craft dispute work assignments. The Carrier contends that this position is substantiated by numerous Awards involving the instant parties.

The Board cannot find that the Organization has been able to meet its burden of proof. In order to sustain its position, the Organization must prove that Track Inspector Young, who held seniority as a Welder, was precluded from performing welding work. After a review of the evidence in this matter, the Organization has been unable to prove that Track Inspector Young was precluded from performing the welding work in question. In addition, there has not been a showing of any substantial practice to support a binding past practice.

Stated differently, there has been no showing that the work was improperly assigned to Track Inspector Young. Thus, having determined that the Organization has been unable to prove that the welding performed by Track Inspector Young was exclusively reserved to Welders, we find that the Organization has not met its burden of proof and the claim is therefore 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 21st day of December 2005.

LABOR MEMBER'S DISSENT  
TO  
AWARD 37669, DOCKET MW-37327  
(Referee Bierig)

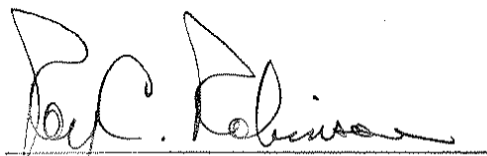
This Award was wrongly decided and therefore a dissent is in order. In this case, the Carrier assigned an employee who was assigned to the track inspector classification to perform work of the track welder classification for a period of three (3) days during November 2000. At the time this dispute arose, the Claimants were assigned as welder and welder helper performing work on the subdivision where the work was performed.

During the handling of this dispute on the property, the General Chairman pointed out that for the last three (3) decades, the Carrier had assigned a welding force that traveled the subdivision where this work was performed doing various welding duties. The Carrier abolished the aforementioned welding force and the welding duties previously performed by them were left undone. This fact was never disputed by the Carrier during the handling of this dispute on the property. Rather than assigning a welder and welder helper to perform welding work, the Carrier asserted that there was a need to have the work at issue performed immediately to ensure the safe operation of train traffic. What we have here is a Carrier who has purposely undermanned its welding operation to such a point that it attempts to justify assigning such work to other classifications.

During the panel discussion, we invited attention to Third Division Awards 36849 and 37317 between these parties. Those awards decided class disputes such as what was before the Board here. In Award 36849, the Board held that there is a long-standing demarcation of work assignments between the Track and Welding Departments. In that case the Welding Department employees performed minimal Track Department work on the claim dates, yet because of the long-standing work demarcation acknowledgment, the Board held that assigning such track work to welders was a violation of the Agreement. Rather, in this case the Carrier simply abolished the welding position that would have performed the work and assigned it to a Track Department employee. In defense of its decision to do so, it asserted that because the track inspector held seniority as a welder, it was proper to assign him to perform the work. If the Carrier is allowed to prevail on such weak premise, then the entire Agreement is at risk.

The record of this case clearly shows that the Carrier blatantly disregarded the Agreement and hoodwinked the Majority to follow its lead. Therefore, I dissent.

Respectfully submitted,



Roy C. Robinson  
Labor Member