

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37847
Docket No. MW-36808
06-3-01-3-381

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 Employees
(
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim of the System committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned System Rail Gang employees C. J. Hurley, T. L. Olson and T. D. Olson to perform maintenance welds on the Albert Lea Subdivision between Mile Posts 242 and 252 located between Gordon and Albert Lea, Minnesota beginning on April 24 and continuing through May 11, 2000, instead of regularly assigned District T-2 Welding Gang employees S. J. Vaith, R. L. Buol and D. T. Lennie (System File 2RM-9154/1237134 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. J. Vaith, R. L. Buol and D. T. Lennie shall now each "*** be compensated for an equal and appropriate share of the total hours worked by the System Curve Gang Welders and Helper, at their applicable straight time and overtime 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.

During the weeks of April 24 and May 8, 2000, a Welder and a Welder Helper from System Curve Rail Gang 9023 were assigned to weld joints on the Albert Lea Subdivision between MP 242 and MP 252 between Gordon and Albert Lea, Minnesota. On May 8, 2000, the Welder and Welder Helper were assisted by a Welder from System Curve Rail Gang 9009. Neither System Gang 9023 nor System Gang 9009 was working in this area at the time.

On May 25, 2000, the Organization filed a claim on behalf of two District Welders and a District Welder Helper who were assigned to Seniority District T-2. The Claimants were headquartered at Albert Lea on former Chicago and North Western Transportation Company (C&NW) property. It is the Organization's position that welding these joints was regular maintenance work that should have been assigned to the District Welders and Welder Helpers on Seniority District T-2 rather than to System Gang Welders and a Welder Helper who had no seniority on District T-2.

The Carrier denied the claim contending that the negotiated Implementing Agreement effective January 1, 1998, gave System Gang Welders the right to work on former C&NW property. The System Gang Welders were performing production work left over from 1999, according to the Carrier, because System Gang 9009 did not have Welders assigned in 1999. Moreover, the Carrier maintains that the Claimants did not have the exclusive right to weld joints on their seniority district.

The central issue before the Board is whether the work of welding joints in 2000 that had been left behind by System Gang 9009 in 1999 could be assigned to System Gang Welders or whether District Welders had the exclusive right to this work. We find that the Carrier had the right to assign this work of welding joints to System Gang Welders.

Initially, there is no question that the Implementing Agreement effective January 1, 1998, extended the seniority territory of all the Carrier's System Gangs to the former C&NW. Indeed, the Organization does not seem to take any exception to this. However, the Organization contends that System Gang employees may only perform work related to their own System Gang. We disagree.

The Organization did not cite any Rule or practice restricting System Gang employees to work on their individual System Gang. In our opinion, System Gang employees may perform any System work. Therefore, when Welders from System Gang 9023 and System Gang 9009 welded joints in 2000 that had been left behind by System Gang 9009 in 1999, this was entirely permissible.

The Organization has not referenced any Rule, Agreement or practice reserving the welding in question exclusively to District Welders on Seniority District T-2. That the district employees also welded joints left behind by System Gang 9009 did not give them the exclusive right to complete this work.

For all these reasons, the Board finds that the June 1, 1985 Agreement was not violated when the Claimants were not assigned to weld joints that had been left behind by System Gang 9009 the previous year. The claim is 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 1st day of August 2006.