

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41001
Docket No. MW-41153
11-3-NRAB-00003-090460**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
**(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Federated Craft Welding Gangs 3450, 3457 and 3468 employees to perform Maintenance of Way and Structures Department work (change rail and insulated joints and related work) on the Clinton Subdivision beginning on March 17, 2008 (System File R-0801C-306/1503738 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Almond, S. Guthrie, L. Gorsh, N. Wiederin, K. Olson, M. Hanson, M. Karsjen and M. Peterson shall now '***each be compensated for an appropriate share of all hours worked by the Federated Craft Welders and Helpers while changing out rail and insulated joints, at the applicable rates of pay, beginning on March 17, 2008 and continuing.”**

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 claim concerns the use of Federated Craft Welding Gangs 3450, 3457 and 3468 allegedly doing Maintenance of Way and Structures Department work of changing out rail and insulated joints.

It is the position of the Organization that the Agreement was violated when the aforementioned Federated Craft Welding Gangs changed out rail and insulated joints in the performance of their work and in the process did scope-covered BMW work. It argued that welding work is not reserved exclusively to Federated Craft Welders (FCW) because a majority of welding work on the Carrier is done by BMW employees. It further argued that rail ends have absolutely nothing to do with changing out rail and insulated joints, which is the emphasis of the subject claim. According to the Organization, there is a history of more than 100 years of its members doing the work and, in this instance, the Carrier violated its Agreement. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the Organization offered no evidence that the work performed by FCW personnel was reserved to the Claimants, or that it was not incidental to the work normally done by FCW personnel. Furthermore, it argued there was no evidentiary proof offered as to exactly what work and/or how much work was allegedly done. It closed by asking that the claim remain denied.

The facts indicate that the Organization filed a continuing claim on behalf of the listed Claimants, all of whom were furloughed and awaiting recall. The Organization alleged that beginning March 17, 2008, FCW employees were permitted to do BMW scope-covered work. The Organization did not claim the work of actually welding rail ends, but the work of changing out rail and insulated joints, which according to it, is maintenance work as defined in Rule 1B. It argued

that changing rail is not incidental to the work of making a weld and, furthermore, the work in dispute has been performed by its members since the inception of the railroad. The Carrier countered that argument by stating that the work in dispute, if actually done, was incidental to FCW employees' duties and, in this instance, the Organization had offered no proof that it was done on the claim dates. Rule 1 B of the parties' Agreement states, in pertinent part:

“Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks. . . .”

The Board is not persuaded by the Carrier's argument that the changing out of rail and insulated joints is incidental to the task of welding rail ends. We concur with the Organization that there is a distinct difference between those tasks and that historically BMW-represented employees have performed those duties. However, it is unclear in this instance whether FCW employees performed that task. The Organization seized upon a one sentence statement in the Carrier's initial declination of June 27, 2008, as proving that the disputed work was done. Therein the Carrier stated:

“. . . Any changing out of rail or insulated joints in performance of the welding duties would have been incidental to his duties to welding the rail ends.”

Contrary to the Organization's colorization of that statement, it is not an admission that the work was done, but instead is an argument that if the work was done, it was incidental to FCW employees' work. In its Submission to the Board the Organization argued that the record reveals that during the November 21, 2008, on-property claims conference, it provided the Carrier the payroll records of Federated Craft Welder Gangs 3450, 3457 and 3468, which substantiate that the work of rail and insulated joint change out was performed on various dates and was not challenged. Examination of those records and the on-property correspondence does not have the same clarity. The payroll records (ten partial pages) for FCW employees have a variety of work code numbers noting 117 different payments and to the right hand side of those code numbers on 18 payments there is a handwritten

statement which reads "Trk Work." The follow-up letter of December 10, 2008, mentioned, in pertinent part, the following:

" . . . The Organization presented copies of gangs work history showing maintenance work codes. . . ."

There is nothing in the record that states that the 18 payments were for the specific work of rail and insulated joint change out, nor is there any documentation that the assigned code number with the hand written comments to the side covers the contested work. The evidentiary proof in this case is found lacking that foreigners to the Agreement performed scope-covered work. Because of that, the Board finds and holds that the claim must remain 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 20th day of July 2011.