

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41775  
Docket No. MW-41045  
13-3-NRAB-00003-090397

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

(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
**PARTIES TO DISPUTE:** (  
(Soo Line Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned a ‘Milwaukee’ Seniority District thermite welding crew to perform thermite welds on ‘Soo’ Seniority District territory at Humboldt Yard on the Paynesville Subdivision beginning on September 7 and continuing through September 11, 2002, instead of ‘Soo’ Seniority District Thermite Welding Crew No. 2 employees C. Frey, R. Dosch, T. Lucy, G. Feigitsch, D. Mohs, and E. Jacobson (System File C-02-080-005/8-00435-004).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Frey, R. Dosch, T. Lucy, G. Feigitsch; D. Mohs and E. Jacobson shall now each be compensated for forty (40) hours’ pay at their respective straight time 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.

The Parties note and the Board concurs that notwithstanding the voluminous record that now comes before us for consideration, the facts surrounding the circumstances that resulted in the filing of the subject claim are not in dispute.

The Carrier acknowledges that for various reasons asserted all of which are evaluated by the Board as having significance, it utilized the Milwaukee Seniority District thermite welding crew to perform thermite welds on SOO Seniority District territory at Humboldt Yard on the Paynesville Subdivision on the October dates in question. The Carrier notes that it utilized the Milwaukee welding crew to perform the disputed work as an alternative to contracting out the work to a third party. The Carrier asserts and the record evidence does not refute said assertions that it attempted to negotiate with the Organization to obtain its approval to use the Milwaukee crew, and that it made a number of concessions that the Organization specified it wanted, but that negotiations ultimately failed as a result of disagreements between the General Chairman representing the Milwaukee employees and the General Chairman representing the SOO employees. Moreover, the Carrier contends that in temporarily utilizing the Milwaukee crew to perform the welding work in question, no SOO welding crew employees were adversely affected during the five claim dates in question, that is, said SOO employees performed work as scheduled with no loss of pay. Additionally, the Carrier contends that Milwaukee crew members benefitted from being utilized in performing the disputed work because had they not performed the work, they would have been put on furlough for the claim dates in question. The Carrier also submits that precedent exists in the form of past instances where ad hoc agreement has been obtained with the Organization to utilize SOO employees to perform work on Milwaukee property and vice versa, without having to enter into a Cross-System Agreement.

The Organization submits that the instant dispute is simply a case of the Carrier utilizing the services of Maintenance of Way personnel governed by one Collective Bargaining Agreement on the former Milwaukee property across seniority district lines to perform maintenance-of-way work performed by Maintenance of Way forces governed by a separate and distinct Collective Bargaining Agreement on the former SOO Line property at Humboldt Yard. The Organization explains that the Controlling Agreement prohibits employees of one seniority district from working on another seniority district unless there exists a Cross-Seniority System Agreement that allows employees of different seniority districts to work on seniority districts other than their own. The Organization notes that no such Cross-Seniority System Agreement had been negotiated between the Parties so as to allow the Carrier to utilize the services of Milwaukee Seniority District Maintenance of Way forces to perform the disputed work that belonged to the Maintenance of Way personnel of the SOO Seniority District. That being the case, the Carrier violated the Controlling Agreement when, without an ad hoc mutual Cross-Seniority System Agreement, it utilized the services of the Milwaukee Seniority Maintenance of Way forces to perform the disputed welding work on SOO Seniority District property. The Organization submits that the Carrier's position that had it not utilized the services of its Milwaukee Seniority District employees it would have had to contract out the work in order for the work to be completed timely is a spurious argument in that the SOO Line Seniority District employees would have been able to perform the welding work had the Carrier re-arranged the work in order for the work to have been completed within the timeframe specified by the Carrier. Based on the foregoing argument asserted, the Organization requests the Board to sustain the subject claim.

This is a classic case of no good deed goes unpunished. The undisputed facts in evidence clearly show that the Carrier strove to assign maintenance-of-way work to its Maintenance of Way employees assigned to the Milwaukee Seniority District who would have been furloughed on the claim dates in question had they not been assigned to perform the welding work in question on the SOO Line property. Additionally, in light of the fact that there was disagreement between two General Chairmen as to the particulars governing the utilization of the Milwaukee Seniority District employees to perform the welding work on the SOO Line property, the only other option, (notwithstanding the Organization's dismissal of such an option,) the Carrier could have exercised was to contract out the welding work in question to a third party. Had the Carrier exercised this option, the Board has no doubt, the Organization would

have filed a claim asserting that the welding work in question belonged to its Maintenance of Way forces and should have been performed by them. Thus, the Carrier was caught by the prevailing circumstances between the proverbial rock and a hard place. The Board finds that the Organization's position that another option that was available to the Carrier was to re-arrange the welding work in question so that it could have been accomplished by the SOO Line Seniority District employees within the timeframe the Carrier contended the work needed to be completed to be mere conjecture, inasmuch as the Carrier is the only party to be in a position to weigh all alternatives in making decisions pertaining to the assignment of work.

Given all the prevailing circumstances extant in this case, coupled with an internal disagreement between two General Chairman to allow maintenance-of-way work to be performed by Maintenance of Way forces on another seniority district, the Board concludes that the Carrier had no other option but to proceed to assign the disputed work in the manner that it did in order to accomplish completion of the work within the timeframe at hand. Accordingly, we rule to deny the subject claim.

**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 25th day of November 2013.