

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42585  
Docket No. MW-42401  
17-3-NRAB-00003-130410**

**The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed and refused to pay per diem to Welding Foreman R. Parker beginning on August 27, 2012 through August 31, 2012 when he was working in conjunction with Production Construction Crew #2744 (Carrier’s File MW-12-15).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Parker shall be allowed the appropriate per diem allowance of forty-three dollars (\$43.00) per day for each day assigned to work in conjunction with Production Construction Crew #2744 beginning on August 27, 2012 through August 31, 2012.”**

**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.

Production Crew No. 2744 (“Crew #2744”) was tasked with replacing Sperry rail (i.e., removing and replacing rail identified by a Sperry Rail Service Track Inspection Car as defective). There is no dispute that welding services are required to accomplish this task. Namely, to cut-off bolts and to weld rail ends. There is also no dispute that Crew #2744 had neither a Welder nor Welding Foreman as part of its crew. In fact, the Carrier never advertised for, nor assigned, a Welder or Welding Foreman as part of Crew #2744. Instead, the Carrier assigned the Claimant, who was part of Welding Crew #3641, to cut-off bolts and to weld rail ends on the same Sperry rail being replaced by Crew #2744. It is undisputed that Welding Crew No. 3641 was a maintenance crew, not a production crew.

The record establishes that Crew #2744 could not accomplish its task without welding services; that the Carrier did not equip said crew with a Welder or Welding Foreman to supply such necessary welding services; and that the Carrier utilized the maintenance-crew-Claimant for the welding services necessary for said production crew’s task. The Board finds that the record does not support the Carrier’s defense that the Claimant was performing “day to day maintenance work” that just happened to be “near/around a Production Crew or just before/after a Production Crew has performed its work.” Therefore, the Board finds that Claimant performed this work “in conjunction with a production crew.”

Article 27.7 states in pertinent part: “Members of maintenance crews will be entitled to payment as provided in paragraph 27.13 if they perform work in conjunction with a production crew.” Paragraph 27.13 sets forth the per diem amount, which is what this claim seeks for each of the claimed dates.

The Board finds that because the Claimant performed this work “in conjunction with a production crew” pursuant to Article 27.7, the Claimant is entitled to the per diem set forth in Article 27.13.

The Carrier argues that the Claimant should not be paid the Article 27.13 per diem because the per diem is intended to compensate production crew members only, because production crew members start and finish their tours in the field, drive there in their own vehicles at their own expense, and on their own time. The Carrier points out that the Claimant started and finished his tours at his Welding Crew #3641 headquarters in Waterville, Maine, and traveled on Carrier time in a Carrier vehicle to and from the Sperry track work site. This argument is not

persuasive in view of the clear and unambiguous language of Article 27.7, which states in pertinent part: "It is understood that maintenance crews time will begin and end at their assigned headquarters and the Carrier will provide transportation to and from the work site." Therefore, because the Claimant was assigned to a maintenance crew rather than a production crew, the Claimant properly started and ended his tours at his welding/maintenance crew headquarters, and travelled on Carrier transportation to and from the work site. Because the Claimant did so to perform work in conjunction with a production crew, he is contractually entitled to the claimed per diem payments.

The Carrier attempts to distinguish this claim from the very similar claims between these same parties that were decided in Public Law Board 5606 Awards 35, 79 and 83. The Carrier argues that none of these Public Law Board Awards involved claims by Welders or Welder Foremen. This argument is not persuasive, because Article 27.7 makes no distinction between job titles and/or classifications.

The Carrier's remaining arguments are not persuasive.

**AWARD**

Claim sustained.

**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 19th day of April 2017.