

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42772  
Docket No. MW-43301  
17-3-NRAB-00003-150156**

**The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier failed to call or assign Claimants L. Perera and B. Glover to perform track maintenance work (i.e., installation of a road crossing) on August 18 and 19, 2013 and September 1, 2013 and instead assigned employee Welders A. Buckhalter and J. Gibbons (System File B16169013/2013-151480 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants shall each now ‘. . . be allowed thirty (30) hours overtime at their respective 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 Organization asserts the Carrier assigned two welders to build and install track panels on the dates of claim. It supports its claim with a statement from the Claimants contending that no welding work was performed. Consequently, the Organization asks that the Claimants be paid for the time worked by the welders.

The Carrier has responded by insisting the welders did, in fact, perform welding work. With its denial, the Carrier provided a statement from the Roadmaster attesting that the employees performed welding duties. It additionally furnished payroll records in support of its position.

This case has presented the Board with an irreconcilable conflict in facts. Neither party has offered statements from the welders or any of the employees who were engaged in the building and installation of track panels. Inasmuch as the Organization bears the burden of proof, the Board must find that it has failed to factually establish a violation of the Agreement.

**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 24th day of October 2017.