

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42983  
Docket No. MW-43071  
18-3-NRAB-00003-150275**

**The Third Division consisted of the regular members and in addition Referee Michael G. Whelan when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (former Burlington Northern  
Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it assigned welders to perform Maintenance of Way work (clear snow and ice from switches) between Mile Posts 0.500 and 4.200 on the St. Joseph Subdivision and between Mile Posts 216.000 and 224.000 on the Brookfield Subdivision on January 5 and 6, 2014 instead of calling and assigning Messrs. M. Crawford, S. Scheerer and R. Hernandez thereto (System File C-14-J010-6/10-14-0156 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Crawford, S. Scheerer and R. Hernandez shall each ‘... be paid 24 hours at their overtime rate of pay as compensation for this violation.’”**

**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 whether it was proper under the Agreement to permit Welders to perform snow removal on overtime. Claimants M. Crawford, S. Scheerer and R. Hernandez established and maintained seniority in the Carrier's Maintenance of Way and Structures Department and, at the time of this dispute, they were assigned to positions in the Track Sub-department and regularly assigned to the Murray Yard Section Gang.**

**The Organization alleges that on Sunday, January 5, 2014, and continuing through Monday, January 6, 2014, the Carrier assigned Welders from the Welding Sub-department to clean snow and ice from switches at various locations on the Murray Hill Yard section territory. The Organization submitted a claim on behalf of the Claimants because it contends that it was a violation of the Agreement to assign Welders to do this work. Specifically, the Organization alleges that the Carrier violated Rule 1 Scope, Rule 2 Seniority Rights and Sub-Department Limits, Rule 5 Seniority Rosters, Rule 24, Forty Hour Work Week, Rule 29 Overtime, Rule 30 Calls, Rule 55 Classification of Work, and Rule 78 Intra-Craft Work Dispute. As a remedy, the Organization seeks that the Claimants each be paid for 24 hours at their overtime rate.**

**The Carrier submits that the Rules cited by the Organization do not reserve snow removal work to Organization-represented employees, and to prevail on its claim, the Organization must establish that the disputed work has been exclusively performed by the Claimants on a system-wide basis. The Carrier argues that the Organization has failed to meet its burden to establish system-wide exclusivity of the work in question and that the Organization has failed to meet its burden of proof.**

**After careful review of the record, the Board finds that the evidence submitted by the Organization is insufficient to support its claim that the assignment of Welders to work overtime instead of the Claimants violated the Agreement. The Board bases its finding on prior arbitral decisions and the clear language of the Rules cited by the parties. The Board agrees with the Carrier's position that the assignment of the tasks here did not violate the Agreement. The**

Organization has the burden of providing evidence that the Agreement was violated. Here, the evidence does not support a violation of the Rules cited by the Organization.

**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 14th day of February 2018.