

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43771
Docket No. MW-42642
19-3-NRAB-00003-140327**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

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

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago
and 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 Welders to perform Track Department work (changing rails and bolts and related work) at various locations in and around the Proviso Yard terminal and the Milwaukee Subdivision on March 12 and 14, 2013 instead of Track Department employees J. Rogers and L. Jones (System File B-1301C-124/154026 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Rogers and L. Jones shall each be allowed an “*** appropriate share of *all hours worked, reportedly thirty-two (32) hours straight time and Four (4) hours overtime*, at the appropriate rates of pay.’ (Emphasis in original.)”**

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 contends in this claim that the Carrier violated the Agreement when it assigned forces from a different bargaining unit, Federated Craft Welders, to perform routine track maintenance duties. Specifically, two members of Gang 3297 replaced sections of rail, angle bars and bolts on diamonds at various locations on the T-9 Seniority District on March 12 and 14, 2013. According to the Organization, the work performed did not involve any welding. Under Rule 1B, "Employees included within the scope of this Agreement ... shall perform all work in connection with the ... maintenance, repair and dismantling of tracks, structures and other facilities used in the operations of the Company...." Rule 1D specifically excludes welders from the Agreement. The record includes evidence that the work occurred on the dates set forth in the claim and where it occurred. It also includes a statement from one of the welders indicating that no welding was involved, in rebuttal to the Carrier's contention that the work was covered by Appendix T, Rule 42 of the IBBB Agreement.

According to the Carrier, the Organization has not met its burden of proof. First, the claim is a vague one asserting that Federated Craft Welders performed track maintenance work. There is no evidence to support that assertion. The Carrier has provided documentation that the work performed was within the scope of Federated Craft Welders. Appendix T, Rule 42 of the IBBB Agreement states:

- “(a) The heating, shaping, bending, grinding, and welding necessary in welding or building up of rail frogs, switch points or other track material by use of electric, oxyacetylene, thermit or other welding process and the cutting of rail or other track material by oxyacetylene when heat treating is required; normalizing, rail end hardening, tempering or any other process of heat treating in connection with track welder's work.”

The record includes a statement from Manager of Track Maintenance Christopher Reynolds, explaining why the work was properly assigned:

“When situations dictate (ie., seized bolts) that require a torch to be utilized in the cutting of loose bolts to be replaced, welders are tasked with this job. Upon removal, the trk [sic] would be considered in an unsafe condition and new bolts would have to be installed to leave trk safe. Welders are expected to leave the trk safe behind there [sic] work.”

The welders used an oxyacetylene torch to cut off seized bolts. The track could not be left in an unsafe condition once the bolts were removed, and any additional work was *de minimis* to cutting the bolts off by torch. Accordingly, the Carrier did not violate the Agreement when it assigned welders to do the work in dispute.

The Board has carefully reviewed the record, including the statement from Welder Jose Guzman:

“To Whom It May Concern,

My name is Jose Guzman Employee # is 037589. I am a Federated Craft Welder and work in the Chicago area. On March 12, 13 and 14, I worked at Deval Diamond and a couple locations on the Milwaukee Sub. At the Deval Diamond, we were given the job of changing bars and replacing bolts on the Diamond. This is not our work. We are supposed to weld, that is why we are called Federated Welders. We have been made to do track work because they are having track employees retire or bid out and they will not hire any new employees. They just make us do the Track Department work. We worked our entire work day of 8 hours doing track work and not our job of welding on all of these 3 days. This includes myself and the other employee on Gang 3297.”

Mr. Guzman’s statement is sufficient to establish that the work occurred on March 12 and 14, 2013, as set forth in the claim, and that two Federated Craft Welders changed bars and replaced bolts on the Deval Diamond and other locations on the Milwaukee Sub. Moreover, Mr. Guzman firmly asserts that the work involved no welding. In contrast, the statement from the Manager of Track Maintenance does not actually indicate that Mr. Guzman and his fellow gang member were using an

oxyacetylene torch to remove and replace the bolts—it explains why welders might be used to remove bolts, but it does not address the specific facts set forth in this claim.

Under Rule 1B, Maintenance of Way forces are charged with performing “all work in connection with the ... maintenance, repair and dismantling of tracks...” Removing and replacing bolts and associated tasks are covered by that grant of authority. The Board finds the record sufficient to establish that Federated Craft Welders removed and replaced bolts, which would ordinarily be MoW work, as claimed. The Carrier contends that the work belonged to the Federated Craft Welders under Appendix T, Rule 42 of the IBBB Agreement. However, there is insufficient proof in the record that the welders assigned to the work actually used oxyacetylene torches to perform it¹ for the Board to conclude that the work clearly fell within the jurisdiction of the IBBB Agreement, and not the BMW Agreement.

The claim shall be sustained. The Carrier contends that no monetary remedy should be awarded because Claimants were fully employed at the time. Board precedent has recognized that monetary remedies are appropriate where employees have lost work opportunities, even though they were fully employed, and in order to preserve the integrity of the Agreement: if the Carrier were able to violate the Agreement without consequences, it would be able—indeed, encouraged—to do so again, undermining the Agreement. The record does not support the full remedy set forth in the claim, however. Mr. Guzman indicated that he and his partner worked a full eight hours, without any overtime, and their payroll records confirm that. Accordingly, Claimants are entitled to equal shares of thirty-two hours at the appropriate straight time rates, but not to any overtime.

AWARD

Claim sustained in accordance with the Findings.

¹ The Board assumes that Mr. Guzman would not have complained about being assigned to do track work instead of welding work if in fact he were using a welding torch in the course of performing the work.

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 16th day of July 2019.