

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43928  
Docket No. MW-44602  
20-3-NRAB-00003-180040**

**The Third Division consisted of the regular members and in addition Referee Meeta A. Bass 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 assigned junior Mobile Production Welder Helper R. Pogose to perform overtime work changing a bad insulated joint between Mile Post DC 11.4 and Mile Post DC 11.6 on the B&OCT Seniority District, Chicago Division on April 17, 2016 instead of calling and assigning senior employe S. Mosley thereto (System File H40404116/2016-204565 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Mosley shall now be compensated for six (6) hours at the applicable overtime rate of pay and such compensation shall be credited towards vacation and retirement entitlement.”**

**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.

By letter dated April 29, 2016, the Organization submitted a claim on behalf of the Claimant alleging that the Carrier improperly called out the claimed against employee to change a bad insulated joint. On June 16, 2016, the Carrier denied the Claim stating there was no violation of the Agreement, and that the disputed overtime was properly assigned under Rule 17. The parties formally conferenced the claim on November 14, 2016 with no change in the position of the Carrier. As the parties were unable to resolve this dispute, the claim was advanced and the same is before this Board for resolution.

The Organization contends that the Carrier violated the Agreement when it failed to assign the Claimant to overtime work which involved joint replacement non-mobile track sub-department work. The Organization also contends that the claimed work was sub-department track work because no welding work was involved, and that the Carrier failed to provide welding reports or any documentation to support its position that the claimed work was track sub department work. The Organization asserts that when welding work is performed, employees are required to enter specific reports which indicate the work performed. The Organization argues that these reports would have shed light on the nature of the claimed work. The Organization further contends that the claimed overtime work was non-mobile section gang work as evidenced by the call out made to the foreman and a track inspector. Moreover, the Organization contends that the Carrier violated Rule 17 Section 1B which allows the Carrier to offer overtime opportunities in order of their seniority on the seniority district when additional employees are needed when the Carrier failed to call out the Claimant. Lastly, the Carrier argues that each of the Claimants should be compensated at their respective assigned rates of pay for all hours expended by the outside forces in the performance of the work. It is the position of the Organization that the claimed work was not a continuation of work and did not involve welding, therefore, the claim should be sustained.

The Carrier contends that the Organization failed to show that the Carrier violated any rules or agreements when it assigned the welding work. The Carrier argues that the assigned work was a continuation of work, and the claimed against employee

was already on the premises performing welding work assigned to weld the insulated joints which had been changed. The Carrier asserts that the claimed work was a continuation of work under Rule 17, Section 2 where group assignment is superior to seniority. The Carrier further argues that the Claimant is not a welder, and the Organization has not established that the Claimant was within the required job class to be given preference for this work. Further, the Carrier maintains that the Organization failed to meet its burden of proof. The Carrier argues that the Organization presented no probative evidence that the claimed work was improperly assigned; the statement of the Claimant is merely self-serving and does not rebut the statement of the Roadmaster. This claim represents only cross contentions. The Carrier argues that the Organization has failed to meet its burden of proof as to each element of the claim, inclusive of remedy. Lastly, it is the position of the Carrier that the claim should be denied.

#### Applicable Agreement of Rules

The Agreement Between CSX Transportation, Inc. and its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999, the Scope Rule, Rule 1, Rule 3, Rule 4, Rule 11, and Rule 17-Preference for Overtime Work.

After review of the record, the Board agrees with the Carrier that the written statements provided in support of the claim and defenses do represent cross-contentions. Depending on which submission is read, the Board could render a decision in support of the claim or in denial of the claim. The Board recognizes arbitral precedent stating that when there is an evidentiary gridlock, that the claim should be dismissed on the basis of the failure to establish a prima facie case. However, in this instance, the Board finds that the Organization submitted a proper request for information and if the information request had been honored by the Carrier, the requested information would have clearly aided in the determination of the claim. Yet, the Carrier failed to provide the requested documents. Therefore, the Board finds that no welding was involved and there was no continuation of duty. The Board finds a violation of the cited rules.

#### 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 5th day of March 2020.**