

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44338
Docket No. 44496
20-3-NRAB-00003-170633**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(BROTHERHOOD OF MAINTENANCE OF WAY
(EMPLOYES DIVISION – IBT RAIL CONFERENCE
PARTIES TO DISPUTE: (
(UNION PACIFIC RAILROAD COMPANY (former
Southern Pacific Western Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to bulletin and assign a welder helper position on Welding Gang 8945 headquartered in Dunsmuir, California beginning on March 12, 2016 and continuing (System File T-1610S-903/1659703 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Crowell shall be allowed ‘... full compensation for all hours worked on Gang 8945, straight time in overtime, because of the Carrier’s failure to properly bulletin and assign the required Welder helper position on gang 8945. Furthermore, we request that Claimant’s benefits be reinstated from the date of the violation. Both, the loss of compensation and benefits, were as a result of the Carrier’s failure to properly bulletin and assign the position. This is compensation that Claimant would have received absent the violation of our Collective Bargaining Agreement.’”**

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 filed the instant claim on May 9, 2016 on behalf of James Cromwell (Claimant) alleging the Carrier violated the Agreement when it failed to bulletin and assign a Welder Helper on Welding Gang 8945 headquartered in Dunsmuir, California. The parties were unable to resolve the matter after processing it in the normal and customary manner on property. This dispute is now properly before this Board for final adjudication.

The Organization argues the Carrier is in violation of Rule 10 of the Agreement by failing to bulletin a welder helper position on Gang 8945 and has instead allowed the duties to be performed by various unassigned employees on a day to day basis for more than thirty (30) days. Moreover, the Organization maintains, Gang 8945 has historically had a welder helper. The Organization disputes the Carrier's assertion that there is no need for a welder helper because Gangs 8945 and 8925 work in tandem. It contends all welding work requires two people for a variety of reasons, including FRA requirements and because the equipment used for welding is too heavy for one person to move alone. The Organization also disagrees with the Carrier's assertion Gang 8925 is a Welding Gang and it is a Section Gang and that there is no need for the two gangs to be working in tandem.

The Organization points out the Claimant was furloughed at all times relevant to this dispute and that he was qualified and available to work as a Welder Helper in Gang 8945.

For these reasons, the Organization requests the instant claim be sustained, and the Claimant be made whole by paying him all compensation he would have earned as a Welder Helper.

The Carrier argues the Organization has not met its burden of proof by failing present sufficient evidence in support of the claim, which is predicated on several false assertions. The Carrier argues there has not been a vacancy for a welder helper since 2012. Despite an assertion to the contrary, the Carrier maintains Gangs 8945 and 8925 are both welding Gangs.

The Carrier argues the Organization has not presented concrete proof that the manager (Womack) sent unassigned employees to work with Padilla as helpers. If it has any evidence it has an obligation to present it when the claim was first filed so that it can be properly evaluated. The Carrier maintains it has the right to determine how it will make assignments of the workforce. Finally, even if the Board were to find that the Agreement was violated, it cannot compel the Carrier to bulletin a position.

The Organization has the burden of proof and the Board finds it failed to sustain that burden. Several assertions are made without concrete evidence to back them up. These have been disproved by evidence presented by the Carrier. Welders are not working without assistance, as evidenced by Womack's statement that the two welding gangs work in tandem with one another. According to the Carrier there has not been a welder helper position vacancy since 2012. The Organization has not presented any evidence to the contrary. The Carrier maintains the right to determine assignments of its workforce. For all these reasons the Board must deny this claim in its entirety.

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 6th day of January 2021.