

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45231
Docket No. MW-46306
24-3-NRAB-00003-210007**

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

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

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to properly compensate Mr. C. Knapp at the Welder Class B (Qualified) rate beginning August 19, 2019 through September 2, 2019 (System File 1251-SLA26-191/14-19-0351 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Knapp shall be compensated the difference in pay between Welder Class B and Welder Class B (Qualified) beginning August 19, 2019 through September 2, 2019.”**

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 behalf of the Claimant, alleging that the Carrier failed to compensate Claimant at the appropriate rate of pay. It is undisputed that Claimant, holds seniority within the Carrier's Maintenance of Way ("MOW") Department as a Welder Class B. The Carrier awarded Claimant a Welder Class B position on Gang TRWX2441 effective August 19, 2019. The Carrier paid Claimant at the Welder Class B rate from August 19, 2019 through September 2, 2019. The Organization asserts that Claimant was entitled to be paid at the higher Welder Class B Qualified rate of pay.

The Carrier contends that the Organization failed to provide sufficient evidence of a rule violation and that Claimant was paid the proper rate of pay.

The parties agree that Rules 1, 2 Appendix 20, and Appendix 26 of the Agreement are relevant to this inquiry which, read in pertinent part as follows:

RULE 1 - SCOPE

This Agreement governs the hours of service, wages and working conditions of employees of the following classes in the Maintenance of Way and Structures Department: Track Supervisors and Motor Track Inspectors, to the extent set forth in Appendix No. 23; Bridge and Building Foremen; Paint Foremen; Bridge Inspectors; Assistant Bridge and Building Foremen; Steel Bridgemen (not including Steel Bridge or Assistant Steel Bridge Foremen); Bridge and Building Mechanics; Bridge and Building Painters; Bridge and Building Helpers; Welder Gang Foremen; Welders; Heat Treaters; Welder Helpers; Extra Gang Foremen; Fence Gang Foremen; Section Foremen; Assistant Extra Gang Foremen and Assistant Section Foremen; Trackmen; System Rail and Plow Gang Employees; Fuel Foremen; Pumpers and Water Treaters; Machine Operators; Bridge and Building and Water Service Laborers; Fuel Station and Sand House Helpers and Laborers; Track, Bridge, Tunnel and Crossing Watchmen and Flagmen and such other classifications as may be shown in the appended wage scale or which may hereafter be added thereto.

RULE 2 - SENIORITY

2(a)- Establishment of Seniority. Except for track, bridge, tunnel and crossing watchmen/flagmen, who do not establish seniority as such, seniority shall be established as Track Supervisor, Motor Track Inspector or in one of the following groups:

“Group 6. -

Class 1: Welder Gang Foreman

Class 2: Welders and Heat Treaters. (Welder ‘A’)

Class 3: Welder Helpers. (Welder ‘B’)

Group 6 Class Changes: See Letter of Understanding dated December 27, 1994, eliminating Welder Helpers and adding welder classes A and B. *Appendix 26.

**APPENDIX NO. 20, BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES**

**RATES OF PAY - Effective July 1, 2003 Former Atchison Topeka
& Santa Fe**

OCCUPATION	JUL ‘02	JUL ‘03
WELDER CLASS A	\$19.08	\$19.55
WELDER CLASS A (TRAINEE)	\$18.58	\$19.05
WELDER CLASS B (HELPER)	\$18.10	\$18.57
WELDER CLASS B (QUALIFIED)	\$18.58	\$19.05
WELDER GANG FOREMAN	\$20.13	\$20.60

APPENDIX NO. 26

As we discussed, it was our intentions to provide all current welder helpers a genuine opportunity to qualify as welders. Except as set forth herein, welder (Class A) and welder Class B positions are subject to the provisions of the rules of the current Maintenance of Way Agreement.

It was agreed that, effective January 1, 1995, Group 6 will be amended as follows:

1. All reference to welder helpers within the current agreement will be eliminated. Group 6, Class 3 will be referred to as welder Class 3. All employees holding seniority as welder helper will be placed on the welder Class B seniority roster in the order of their current welder helper seniority dates. Group 6, Class 2 will be referred to as welder (Class A).

2. (a). All employees on the Group 6, Class 3 Welder Class B seniority rosters who are qualified to perform welds and occupy a Welder Class B position will be advanced to a higher rate of pay - \$14.70 per hour, effective January 1, 1995. Those who are not qualified to perform welds, will remain at the former welder helper rate - \$13.89 per hour. If such an employee subsequently becomes qualified to perform welds, he will be advanced to the higher rate beginning on the first day of the next pay period following the date they are qualified to perform welds.

(d). All welder Class B positions, when advertised for bulletin, will be advertised with the higher welder Class B rate. If an employee who is not qualified to weld bids on and is assigned to the position, he will assume the lower rate. The same situation will apply when such employee displaces an employee who is qualified to weld and getting the higher rate; he will assume the position at the lower rate."

Per Letter of Understanding dated August 28, 2015, the Carrier and General Chairman entered into agreement to maintain welder Class B

positions irrespective ATSF/SLSF Implementing Agreement Section 2H, to which it was agreed in pertinent part as follows:

“This will confirm discussion between you and Samantha Rogers regarding the ATSF/SLSF Implementation Agreement, specifically Section 2 H, and the elimination of Welder B seniority. In order for Engineering Support to process assignments properly for Welder ‘B’ positions under the A/B Combo Welder setup, it is necessary for existing District 900 Welders (Welder ‘A’) to have a corresponding Welder ‘B’ date. The parties agree to strike all references regarding the elimination of Welder B or Welder Helper seniority in Section 2, H of the Implementing Agreement. Only those District 900 employees with existing Welder Helper seniority will establish seniority on the Group 6, Class 3 Welder B roster using their existing seniority date.”

As noted by the Organization, Rule 1, Scope, provides for the establishment of hours of service, wages and working conditions for the listed classes of MOW employees, including welders and welder helpers. Further, Rule 2, Establishment of Seniority, outlines the seniority rosters of the listed employees within Rule 1. Group 6 classifies the position of welders as either Class 2: Welders and Heat Treaters (Welder A) and Class 3: Welder Helpers (Welder B). Rule 2 also references Appendix 26 which eliminated the welder and welder helper positions, formally identified as Group 6, Class 2 and Class 3 and replaced the classifications in Rule 2 with Welder A or Welder B.

Appendix 26, paragraph 2(a) further distinguishes between employees holding Welder Class B rights who are qualified to perform welds and those who are not qualified to perform welds. Appendix 26 paragraph 2(d) provides:

All welder Class B positions, when advertised for bulletin, will be advertised with the higher welder Class B rate. If an employee who is not qualified to weld bids on and is assigned to the position, he will assume the lower rate.

The parties agree that Claimant is qualified to perform welds and that he bid and was awarded a Welder Class B position on Gang TRWX244 effective August 19, 2019, through September 2, 2019. However, the Carrier violated the agreement and paid Claimant at the lower unqualified rate. Based on the clear and unambiguous language of Appendix 26, the Board concludes that Claimant, who is qualified to weld,

should have been paid at the higher Class B (Qualified) rate. The Carrier's argument that Claimant is not entitled to the higher Class B (Qualified) rate of pay because he forfeited his Class A Welder seniority is immaterial to this issue.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of March 2024.