

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45657
Docket No. MW-48482
26-3-NRAB-00003-240159

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

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier directed employes C. Lentz, G. Williams and J. Nelson away from their respective regular assignments, as vac truck crane operators in the Engineering Services Crane (ESC) Sub-department and as section foreman in the Track Sub-department, to perform routine welding work including, but not limited to, work associated with frog rehabilitation involving grinding and welding in the vicinity of Humboldt East Switch at Mile Post 3.3, at Shoreham Yard and on the Camden Switch at Mile Post 3.1 on the Paynesville Subdivision and at the Duluth/Superior Terminal on the Merriam Park Subdivision on July 11, 20, 25, 26, 27 and 28, 2022, instead of offering the work to Welding Sub-department and headquartered Glenwood Welding Crew Members J. Jacobson, A. Nygaard and B. Terhaar, who were assigned as welder foremen and welders (System File C-61-22-060-21/2022-00030175 SOO).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Jacobson, A. Nygaard and B. Terhaar shall now receive ‘... a proportionate share each of ninety (90) hours at their applicable straight-time and/or overtime rates of pay for all for (sic) time, benefits, and work opportunities lost...’”

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 matter involves whether the Carrier's assignment of employes in one sub-department to work in another sub-department where they do not hold seniority violates the Agreement. There is no dispute that on July 11, 20, 25, 26, 27 and 28, 2022, the Carrier assigned vac truck crane operators in the Engineering Services Crane (ESC) sub-department and as section foreman in the Track sub-department to perform welding work in the Track Sub-department rather than calling in the Claimants, who were senior and regularly assigned within the Welding Sub-department on the territory in question.

The Organization claims that Rule 3 of the Agreement clearly and unambiguously provides that seniority rights are confined to the sub-department in which employes are employed and that is the responsibility of the Carrier to staff its workforce in a manner that it is able to assign work to those it is contractually due. The Carrier claims that the Claimants were fully employed/unavailable and no one had previously bid on positions that would have performed the work at issue, with the employes assigned in Claimants' stead being qualified to do the work.

Rule 3 states, in relevant part:

SENIORITY - SUBDEPARTMENT LIMITS

(a) Except as otherwise provided, the seniority rights of employes are confined to the sub-department in which employed. The sub-departments are as follows:

1. Track;
2. Bridge & Building;
3. Engineering Services Crane;
4. Engineering Services Equipment & Machine;
5. Welding

...

(f) The Welding Sub-Department comprises the following:

Group	Rank
	(a) Foremen
	(b) Welders
	(c) Grinders
	(d) Laborers

...

In support of its position, the Organization relies on the holding in Third Division Award 14623. In that case, the board considered whether language similar to that in Rule 3 restricted the carrier's right to temporarily transfer employes from the Bridge & Building sub-department to augment a gang of Track sub-department employes relaying rail. The Board concluded that "the crossing of sub-department lines constitutes a violation of the Agreement despite Carrier's belief that it was serving the best interest of the employes as a whole."

Award 14623 should not be treated as compelling precedent for the general proposition that the crossing of sub-department lines is a per se violation of provisions similar to Rule 3. Although such language appears to have been intended to protect the seniority rights of employes within a sub-department against the interests of employes outside that sub-department, it does not explicitly prohibit the Carrier from making temporary transfers of employes, and there may be circumstances where doing so does not impair their seniority rights and may be operationally necessary. For example, if a carrier attempts to secure the seniority interests of employes by offering the work to employes holding seniority within the appropriate sub-department or bidding the work and no employes accept or bid on the work, it may justify a temporary transfer. The Organization argues that it is the Carrier's responsibility to provide for adequate staffing to meet its needs, but this is not always possible in the dynamic context of operations when emergencies or other unforeseeable circumstances require additional forces to work within a sub-department. In such instances, if there is inadequate time to hire new employes or

subcontract the work, it is difficult to see how the Carrier could comply with the Agreement under this restrictive holding.

As discussed above, the plain language of Rule 3 is intended to protect the seniority interests of employes within a sub-department against the interests of employes outside that sub-department. In the ordinary course of operations, this would require that employes assigned to a sub-department perform work within that sub-department to the exclusion of employes holding seniority in other sub-departments. However, when the seniority rights of employes within a sub-department are protected but emergencies or other circumstances require additional forces within that sub-department and it is impossible or impractical to secure those forces by hiring, contracting, or other means, the temporary transfer of qualified employes does not violate the Agreement.

In the instant case, the work at issue was performed by qualified employes outside the Welding sub-department on a temporary basis for 6 days within a 17-day time frame. More significantly, the Carrier put the disputed work out to bid and neither the Claimants—who were employed within the Welding sub-department while the work in dispute was performed—nor any other Welders holding seniority within the Welding sub-department bid on this work. Under these circumstances, there was no violation of the Agreement.

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 20th day of March 2026.