

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45660
Docket No. MW-48486
26-3-NRAB-00003-240163

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 employe D. Grace away from his regular assignment as a grinder in the Welding Sub-department to perform routine machine operator’s work including, but not limited to, operating a ballast regulator in the vicinity between Mile Post 26 and Mile Post 98 on the Paynesville Subdivision on May 20, 21 and 22, 2022, instead of offering the work to Engineering Services Equipment and Machine Sub-department and Cross System Production Crew 4 Member S. Herman, who was assigned as a machine operator (System File C-56-22-060-20/2022-0029557 SOO).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Herman shall now receive ‘... forty-one (41) hours at his applicable overtime and double-time rates of pay for all for (sic) time, benefits, and work opportunities lost beginning on May 20, 2022 and continuing through May 22, 2022; time to which he was entitled by virtue of his seniority and regular assignment within the Engineering Services Equipment & Machine Sub-department on the territory in question, but which he was denied when the Carrier failed to offer him the opportunity to perform the work in question.’”

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 an employes in one sub-department to work in another sub-department where they do not hold seniority violates the Agreement. Specifically, the Organization alleges that the Carrier assigned a Grinder in the Welding Sub-department to perform routine Machine Operator work operating a ballast regulator, while failing to make any attempt to call and assign the work to the Claimant, who is a Machine Operator holding seniority in the Engineering Services Equipment and Machine Sub-department.

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. 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
	...

The plain language of Rule 3 is intended to protect the seniority interests of employees within a sub-department against the interests of employees outside that sub-department. In the ordinary course of operations, this would require that employees assigned to a sub-department perform work within that sub-department to the exclusion of employees holding seniority in other sub-departments. However, when the seniority rights of employees 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 employees does not violate the Agreement.

In the instant case, the assignment was temporary in nature—lasting only three days—but the Carrier did not assert any emergency or other circumstances as justification for assigning the work outside the sub-department where it is routinely performed. Rather, the Carrier asserted that the Claimant declined its offer to perform the work, and that the Grinder did not perform the work in May 2021, as alleged in the claim.

Regarding the Carrier’s assertion that the Grinder did not perform the disputed work in May 2021, it is correct that this work was not performed in May 2021, but the Organization pointed out in its appeal that the reference to May 2021 in one section of the claim was a typographical error, and the first paragraph of the claim correctly identified that the work took place in May 2022. After the Organization informed the Carrier of that typographical error, the Carrier did not advance this assertion any further. Under these circumstances, the Organization has established that the work performed by the Grinder took place on May 20, 21 and 22, 2022.

Regarding the Carrier’s assertion that it offered the work to the Claimant, the Carrier’s response to the initial claim includes evidence—by way of a statement in the response by the General Roadmaster as a fact witness—that it offered the work to the

Claimant. In its appeal, the Organization included a statement from the Claimant rebutting the General Roadmasters' statement. There is no persuasive evidence to support either party's position and we are presented with an irreconcilable dispute of material fact. Because this dispute of fact prevents the Organization from sustaining its burden of proving that the Carrier violated the Agreement as alleged, the claim must be dismissed. Third Division Awards 37204 and 36406.

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.