

Award No. 39  
Case No. 39

Public Law Board No. 2203

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Consolidated Rail Corporation

STATEMENT  
OF  
CLAIM:

(a) The Carrier violated the Rules Agreement effective April 15, 1944, as amended, particularly Rule 1, Scope, when Welding Supervisor P. Kranenberg and a Welder from the former Pennsylvania Railroad performed Welder's work at various locations on the former Lehigh Valley Railroad on November 1, 2, 3, 8 and 9, 1977; and additionally received 15 hours overtime.

(b) As a result Welder S. Cappellano, who normally performed the work in question prior to his position being abolished on October 31, 1977, be compensated eight hours pro rata for each date stipulated above, as well as 15 hours at the overtime rate.

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FINDINGS:

The issue is whether a non-bargaining unit employee, Welding Supervisor Kranenberg, performed bargaining unit work on the days in question.

It is undisputed that claimant, a welder, was on furlough on those days.

Claimant's position as welder was abolished on October 31, 1977. It is Petitioner's contention, and claimant states, that on the following day and the several specified dates thereafter welding work was performed by Mr. Kranenberg and "a welder from the Pennsylvania Railroad." According to claimant, that work included "duties which are normally performed by myself." It allegedly was performed at Richards Abbott Street and Kennedy Crossing on the welded rail segment of former Lehigh Valley Trackage.

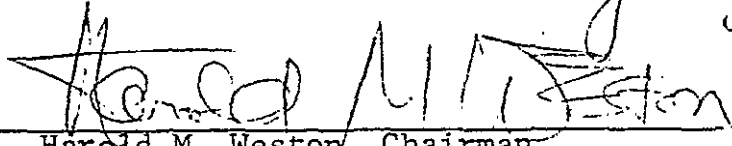
Confronted with these statements, it was incumbent upon Carrier to come forward with facts showing that no welding work was in fact performed by Kranenberg while claimant was on furlough or that some emergency or other exceptional set of circumstances made it necessary to call upon Kranenberg. It was not an effective reply to the claim to state that Mr. Kranenberg "was working in his capacity as a Welding Supervisor."

While we agree with Carrier that exclusivity must be shown, it is our conclusion that where such specific craft work as welding is involved, that work clearly belongs to

members of the bargaining unit who were on furlough in the absence of a showing by Carrier that it was necessary or proper for the foreman to handle it under the specific circumstances of this case. The burden of coming forward with that evidence rests with Carrier. Principles as to proof must be evenly applied.

AWARD: Claim sustained. Award to be effective within 30 days of adoption.

Adopted at Philadelphia, Pa., *January 11, 1980.* 1979.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member