

**BEFORE
PUBLIC BOARD No. 7100**

**Award No. 8
Case No. 8**

**BROTHERHOOD OF MAINTENANCE OF)
WAY EMPLOYES)**

VS.

UNION PACIFIC RAILROAD COMPANY)

**) PARTIES TO
) DISPUTE
)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

Appeal by the Organization on behalf of Foreman G. Owen and Machine Operator G. Chaney (“the Claimants”) regarding the Carrier’s decision on June 18, 2004¹, to assign overtime work (to operate a boom truck to haul and distribute ballast and provide flag protection) to Welder R. Murphy and Welder Helper D. Owen, in Melcher, Iowa, instead of assigning the overtime work to the Claimants. As a remedy, the Organization asks the Board to compensate the Claimants for sixteen (16) hours at their respective time and one-half rates of pay.”

FINDINGS:

Claimant G. Owen has a service date of March 27, 2000 and holds seniority as a foreman in the Track Subdepartment of the Maintenance of Way and Structures Department (“MWSD”) date of June 8, 2001. Claimant G. Chaney has a service date of June 25, 1996, and holds seniority as a common machine operator in the Track Subdepartment of the MWSD date of August 16, 1996.

¹ All dates hereinafter refer to the year 2004 unless otherwise specified.

On June 18, Carrier assigned overtime work Welder R. Murphy and Welder Helper D. Owen to haul and distribute ballast and provide flag protection at Mile Post 43 on the Trenton Subdivision, Melcher, Iowa. Both Murphy and Owen were assigned to Gang 2910.

The Organization argues the overtime work in dispute has been historically, traditionally and customarily assigned to and performed by employees in the machine operator and foreman classifications. It asserts both Claimants hold seniority on District T-2 and have been regularly assigned to work as a track foreman and machine operator in Gang 2927 at Trenton, MO. It also claims Carrier's assignment of overtime work to Welder Murphy and Welder Helper Owen is in violation of Rule 3 and 31 of the November 1, 200 Agreement.

RULE 3- CLASSIFICATION OF WORK

* * *

- B. An employee directing the work of employee and reporting to officials of the Company shall be classified as a Foreman.

* * *

- G. An employee assigned to the operation of any welding device used in the performance of such work as repairing, tempering and cutting rails, frogs and switches, bridge welding, and such other welding in the Maintenance of Way Department, shall be classified as a Welder.

- I. An employee qualified and assigned to the operation and servicing of machines used in the performance of Maintenance of Way and Structures Department work shall be classified as a Machine Operator.

* * *

- O. An employee assigned to assist the respective B&B Carpenters, Welder, and Work Equipment Mechanic shall be classified as a Helper.

RULE 31- CALLS

A. Employees called to perform work not continuous with regular work period shall be allowed a minimum of two hours and forty minutes at rate and one-half, and if held on duty in excess of two hours and forty minutes shall be compensated on a minute basis for all time worked. When necessary to call employees under this rule, the senior available employees in the gang shall be called

The Organization argues the Claimants have a contractual preference to the overtime work in dispute by virtue of their job classifications as foreman and machine operator. It asserts the language of Rule 3 of the Agreement provides the duties and responsibilities of foremen, machine operators, welders and welder helpers. It maintains the nature of the overtime work assigned was fundamentally track work and it was unrelated to any of the welders and welder helpers' responsibilities and duties as described in Rule 3 of the Agreement. It contends Welder Murphy and Welder Helper Owen, who were assigned to the disputed overtime work, were not regularly assigned the duties foreman and machine operator classification as provided by Rule 3 of the Agreement.

The Organization refutes Carrier's contention that the work was assigned in accordance with Rule 23 L, the Work Week provision of the Agreement, which states, in relevant parts, as follows:

Work on unassigned days- Where work is required to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who shall otherwise not have 40 hours of work that week; **in all other cases by the regular employee.**
(Emphasis added)

The Organization disputes Carrier's assertion the Claimants were not "the regular assigned employee" in this case; and that "the regular assigned employee" was B. McGinnis, a truck driver on Gang 2898 who was on vacation and unavailable to perform the overtime work. The Organization argues irrespective of whether McGinnis had a

“better” right to the overtime, the assignment of overtime work still violates the Agreement because Welder Murphy and Welder Helper Owen were not “the regular employees” assigned because of their job classification. It insists the hauling and dumping of ballasts and flag protection is not contractually reserved for welders and welder helpers. The Organization argues the instant dispute is a classification dispute (the assignment of overtime work to the wrong classification of employees) rather than a district seniority dispute. Further, the Organization asserts both Claimants were fully qualified, willing and available to perform the overtime work in question.

For all the foregoing reasons, the Organization asks the Board to compensate the Claimants for the sixteen (16) hours of overtime lost at their respective time and one-half rates. It maintains the predominant view is to make whole claimants for loss of work opportunity and to compensate them at the rate they would have received under the Agreement had they been called and assigned the work as required by the Agreement.

Carrier, on the other hand, argues the overtime work was assigned in accordance with Rule 23 L of the Agreement. Specifically, it argues the work was assigned and performed by Welder Murphy and Welder Helper Owen, employees who were ‘regularly assigned’ to maintain the track at MP 43, which is the territory where the overtime work was performed. It maintains McGinnis was the truck driver regularly assigned at MP 43 who was contractually entitled to the overtime work in dispute. However, McGinnis was on vacation and unavailable to perform the overtime work. Carrier further asserts none of the Claimants were regularly assigned to maintain the portion of the track at MP 43, where the overtime was needed. Moreover, the Carrier contends, both Welder Murphy and Welder Helper Owen, (who worked within the same Track-Subdepartment as

Claimants) have regularly hauled and distributed ballast and provided flag protection at MP 43 when they are not welding.

In order for the Organization to prevail, Carrier contends it would have to show the overtime work at MP 43 was part of the work performed by the Claimants in the territory where they were assigned. Carrier asserts the Organization failed to meet its burden. In this regard, Carrier asserts the overtime work was not part of the work regularly assigned to the Claimants or part of the work they were performing when the overtime was assigned. Since truck driver McGinnis was absent, Carrier argues it was within its managerial right to assign the overtime work to Welder Murphy and Welder Helper Owen, who regularly worked in maintaining the portion of the subdivision where the overtime work was needed.

In addition, Carrier refutes the Organization's job classification assertion the Claimants are entitled to the overtime work under Rule 3 of the Agreement. Carrier argues the language of Rule 3 does not restrict Carrier's managerial right to assign its welders or welder helpers to haul and unload ballast or provide flag protection. It also argues the work is not exclusive to the foreman and machine operator classifications, as alleged by the Organization. In this regard, Carrier argues the Organization failed to meet its heavy burden to establish the Claimants, a foreman and a machine operator, have the exclusive rights to the overtime work in question to the exclusion of others. As for the remedy requested, Carrier contends the remedy sought is excessive because the Organization failed to establish any loss of work or wages by the Claimants.

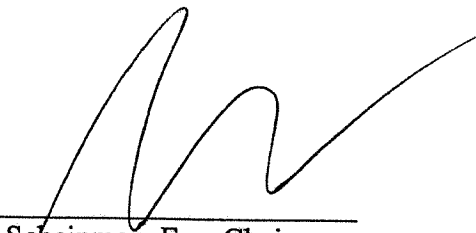
After reviewing the record facts, the Board finds the grievance must be denied. The issue in this case is whether Carrier should have assigned the overtime work to haul

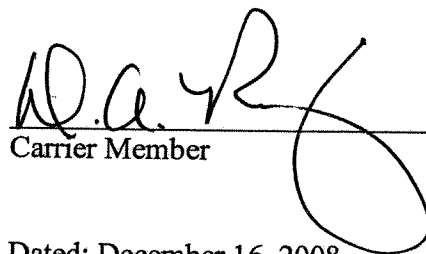
and unload ballast and provide flag protection at MP 43 to the Claimants (a foreman and a machine operator) instead of Welder Murphy and Welder Helper Owen. A resolution of a dispute of this nature, (whether it involves different crafts or different job classifications) generally involves the same type of question: to what extent the work in dispute is reserved to one group of employees to the exclusion of others. Usually, the answer to this question depends of the Board's assessment of "the particularity of the rule in question and of the history, tradition and custom and practice associated with the work in dispute." (Third Division Award No. 13083) In this kind of cases, it is well established, the Organization bears the burden of proving the work is reserved for the Claimants to the exclusion of others. Here, the crux of the Organization's case is the Claimants should have been assigned the overtime work because hauling and unloading of ballast and flag protection, is specifically reserved to foremen and machine operators under Rule 3 of the Agreement. On the other hand, Carrier essentially argues there is nothing contained in the Agreement granting the foremen and machine operators the exclusive right to the hauling and unloading ballasts as well as providing flag protection to the exclusion of others or restricting its managerial right to assign the work in dispute to its welder and welder helper.

We find Carrier's assignment here was improper. The record in the property demonstrates the organization has met its burden. However, we deny any monetary remedy under the facts presented.

AWARD

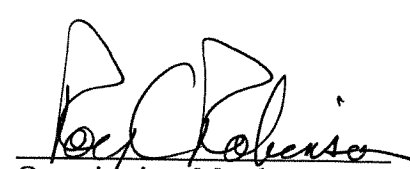
Claim sustained to extent indicated in Opinion.



Martin F. Scheinman, Esq. Chairman
Neutral Member

Carrier Member

Dated: December 16, 2008



Organization Member
