

AWARD NO. 126
Case No. 126

Organization File No. G35756910
Carrier File No. 2011-085230

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed to call and assign Welders G. Farris and J. Mobley to weld culvert pipes between Mile Posts 00C183 and 00C185 at Wofford, Kentucky on the Appalachian Division on August 15, 16, 17, 18, 24 and 25, 2010 and instead assigned B&B Mechanic T. Marion.
2. As a consequence of the violation referred to in Part 1 above, Claimants G. Farris and J. Mobley shall now each be compensated at their respective and applicable rates of pay for an equal share of the fifty (50) straight time hours and the twenty-four and one-half (24.5) overtime hours that B&B Mechanic T. Marion expended in the performance of the aforesaid work on August 15, 16, 17, 18, 24 and 25, 2010.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

During August 2010, the Carrier used a B&B Mechanic, T. Marion, to perform welding on culvert pipes in the vicinity of Wofford, Kentucky. The Organization filed the instant claim asserting that the work performed was structural welding work that may be performed only by certified

structural welders. It is undisputed that Marion is not a certified structural welder, nor is he on a B&B Structural Welder Roster. The Organization cites Section 11.A. of the Memorandum of Agreement effective September 1, 2009, reading as follows:

Section 11 - Bridge and Building Structural Welders

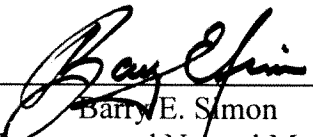
- A. A B&B Structural Welder Roster will be established effective July 1, 2009. The Carrier may advertise B&B Structural welder positions to work within the B&B Sub-department. Employee's who hold a seniority date on an existing Welder Foreman, Welder or Welder Helper roster will be placed on the B&B Structural Welder Rosters with a corresponding date equivalent to their existing Welding seniority date once they have been certified as a "structural welder." An employee entering service as a new hire, or an employee establishing B&B Welder Foreman, Welder or Welder Helper seniority without previous Welder Foreman, Welder or Welder Helper seniority will acquire seniority in that class from the date assigned to an advertised position (or date hired) and will establish seniority as of the same date in lower classes on the same seniority roster as well as the Welding Sub-department Welder Foreman, Welder or Welder Helper roster as the case may be. Such employees will be placed on the B&B Structural Welding Rosters with a corresponding date equivalent to their existing Welding seniority date once they have been certified as a "structural welder."

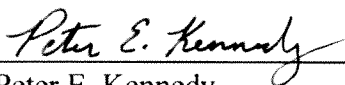
The threshold question in this case is whether the work is considered structural work and must therefore be performed by a certified welder. While the Carrier, in its argument before the Board, denied that the work in question was structural work, we find that this argument was not raised during the handling of the claim on the property. Inasmuch as the Organization's position that it was structural work was not refuted, we will find, at least for the purposes of this claim and without establishing a precedent, that the work performed was structural work. As to whether one must be a certified structural welder to perform it, we find that Section 11 establishes a special seniority roster for employees who have such a certification. The concept of having seniority rosters is tied to the reservation of certain work to those employees holding seniority. It follows, therefore, that none but employees on the Structural Welder seniority roster may perform structural welder

work. Inasmuch as Marion was not on the roster, it was a violation of the Agreement to have him do the welding on the steel culvert.

The Carrier has asserted that Claimants also did not have seniority rights to perform this work. The record before the Board is insufficient to allow us to make such a determination. Under the circumstances, we will sustain the claim conditional upon Claimants, either both or individually, having been on the seniority roster as Structural Welders on the dates of claim. If either of them was not, the claim is denied with respect to that Claimant.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Peter E. Kennedy
Employee Member


Robert Paszta
Carrier Member

Dated: January 7, 2013
Arlington Heights, Illinois