

PUBLIC LAW BOARD NO. 6399

**CASE NO. 39
AWARD NO. 39**

**Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company
(former Norfolk & Western Railway Company)**

Claimants: M. Malone and V. Varga

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to assign Messrs. M. Malone and V. Varga to work in conjunction with the Loram Rail Grinding Train between Mile Posts B 172.02 to B 197.00 and Mile Posts GZ 485 to GZ 488 in the vicinity of Cleveland, Ohio on the Eastern Region on January 13, 2020 (System File D-20NS42-427/MW-DEAR-20-29-LM-215 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimants M. Malone and V. Varga shall now each be compensated for five (5) hours and fifteen (15) minutes of overtime at their respective rates of pay.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimants have established and maintain seniority in the Carrier’s Maintenance of Way and Structures Department. On the day on which the claimed work occurred, the Claimants were working their respective assignments as a welder and track patrol foreman.

On January 13, 2020, the Carrier employed the services of the Loram Rail Grinding Train to grind and smooth the surface of the rail along two stretches of track between Mile Post B 172.02 and B 197.00 and Mile Post GZ 485 to GZ 488 in the vicinity of Cleveland, Ohio on the Eastern Region. There is no dispute that a welder helper vacancy existed and that, at that time, Claimant Varga possessed welder helper seniority.

Typically, the Carrier assigns one welder and one welder helper to work in conjunction with the Loram Rail Grinding Train. The Carrier did not assign the Claimants to perform this work, although they were available and willing to perform the work had it been assigned to them.

The Organization filed these claims on March 4, 2020, which were denied by the Carrier on May 1, 2020. The claims were appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Carrier failed to assign the Claimants to work in conjunction with the Loram Rail Grinding Train in violation of Rules 1 and 2 of the parties' controlling Agreement. The Organization contends that there is no dispute that the Claimants possessed the necessary seniority but were not assigned to perform the work. The Organization contends that the Claimants have historically and customarily been assigned to perform the work for a period of over nine years prior to the claim date and that they would have performed the work had they been assigned.

The Organization contends that there is also no dispute that the Carrier's historical practice has been to assign one welder and one welder helper to work in conjunction with the Loram Rail Grinding Train, as is evidenced by multiple unrefuted employe statements. There is no dispute that Claimant Malone was assigned as a welder on the claim date and that he possessed the necessary seniority to perform the work. There is also no dispute that a welder helper vacancy existed and that Claimant Varga possessed welder helper seniority. The Organization contends that the Carrier has failed to adequately explain why it did not assign a welder and welder helper to work in connection with the grinding train. The Organization contends that by failing to assign the Claimants, the Carrier violated the Claimants' established seniority rights.

The Organization contends that the Claimants are entitled to be compensated for five hours and fifteen minutes of overtime at their respective rates of pay.

The Carrier contends that the Organization has failed to identify what duties the Claimants were allegedly entitled to perform, as no tasks or work were identified in the claim. The Carrier contends that Claimant Varga, who had voluntarily bid to a position as a Track Patrol Foreman at the time, was not entitled to perform duties normally performed by a Welder and Welder Helper.

The Carrier contends that seniority classifications do not reserve any tasks to a given classification, they simply protect rates of pay. The Carrier contends that the Organization has failed to cite any provision of the Agreement, or any binding past practice that would reserve any particular work to the Welder or Welder Helper classification.

The Carrier contends that the Organization, as the party alleging a breach of the parties' Agreement, bears the burden of proving that a violation has occurred. The Carrier contends that the Organization has not cited to any specific Agreement language or provided any evidence to support its allegation that the Agreement was violated.

The Carrier contends that absent any contractual restrictions, it is well-settled that the Carrier has the right to determine the way work is to be performed, and the number of employees needed to perform a specific task. The Carrier contends that it retains the right to assign work in the manner it deems appropriate, and there is no Agreement language specifying who must be assigned to work in conjunction with the Rail Grinding Train.

The Carrier had the right and responsibility to conduct its business as it saw fit, unless restricted in some manner by the collective bargaining agreement. As the Third Division wrote in Award 16458,

...This Board has often held that it is the function of management to determine the manner and place where the work shall be done as well as the number of employees needed to perform the work. The exception being when said managerial prerogative is limited or relinquished by agreement with the Organization.

As the moving party, the Organization held the burden of proving a violation, but there is no cited Agreement provision that would prevent the Carrier from determining not to assign the Claimants to an assignment of Welder and Welder's Helper in conjunction with the Rail Grinding Train on January 13, 2020. The Board has carefully reviewed the record and can find no sufficient evidence at least of a violation of the parties' Agreement.

AWARD

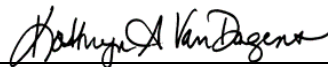
Claim denied.

ORDER

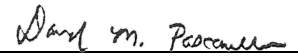
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Scott M. Goodspeed,
Carrier Member



Kathryn A. VanDagens,
Chairman



David M. Pascarella,
Employee Member

Dated: 2-23-2026