

PUBLIC LAW BOARD NO. 7738

Case No. 28

Carrier File No.: 11-12-0274

Organization File No.: T-D-4118-W

Claimants: G. Kudrna and J. Syverson

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION - IBT RAIL
CONFERENCE**

-and-

**BNSF RAILWAY COMPANY
(former Burlington Northern Railroad Company)**

**STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:**

1. "The Agreement was violated when the Carrier failed to assign Claimants G. Kudrna and J. Syverson to work with Steel Gang RP-06 between Berhold, ND and Wheelock, ND on April 23, 2012 and continuing until June 2, 2012 and instead assigned employees E. Wald T. Iverson and C. Ronglein (System File T-D-4118-W/11-12-0274 BNR)
2. As a consequence of the violation referred to in Part 1 above, Claimants G. Kudrna and J. Syverson shall now "... each receive all hours worked by the Mobile welding crew with pay to be at claimant's (sic) overtime rate of pay for the hours that they was (sic) not allowed to work." (Employees' Exhibit 'A-1')."

FINDING

The Board finds that the Parties herein, Carrier and Claimants are within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction of the parties and the subject matter.

The Claimants, G. Kudrna and J.Syverson holds seniority in the Maintenance of Way and Structure Department.. On the dates in question they were assigned as welders to the Stanley Welding Crew. During multiple dates between April 23, 2012 and June 2, 2012, the Carrier assigned members of a mobile welding crew to perform over time welding work on the Glasgow Subdivision. The Organization submitted a claim on behalf of the Claimants and alleged the assignment of welding work to members of a mobile welding crew was a violation of the Collective Bargaining Agreement.

The Organization maintains that the Carrier has regularly assigned the Claimants to perform welding duties at the locations at issue. The Organization insists that the failure to assign the Claimants to perform the overtime welding work with the Steel Gang RP-06 was a violation of the Agreement. The Organization specifically points to Rule 1 Scope, Rule 2 Seniority Rights and Sub-Department Limits, Rule 5 A, Seniority Roster, and Rule 24 Forty Hour Work Week, as being violated. In support of its position, the Organization cites several NRAB Third Division Awards to support their interpretation of the above Rules. As a remedy, the Organization, claims that the Claimant is entitled to be compensated "all hours worked by the Mobile welding crew during the time at issue."

The Carrier first contends that the present dispute is not an inter-craft dispute "between different sub-departments, crafts, or positions as defined in Rule 5 of the Agreement." The Carrier points out that all the employees listed in the claim are welders, the only difference is that the employees who received the assignment were from a mobile unit and the Claimants were assigned to headquarters. The Carrier further insists that that the assignment did not violate the seniority clause " because an employee's seniority rights apply to position-not daily task, under the bulletin and assignment Rules 21 and 22."The Carrier cites several past arbitral precedents to support its position. The Carrier cites Third Division Award 39356 to support their position that the assignment of the mobile unit was not a violation of the Agreement.

With regards to Rule 24, the Carrier contends that the employees assigned to perform the tasks were regular employees, thus this provision of the Agreement was not violated

After careful review of the record, the Board finds that the evidence presented by the Organization is insufficient to support their claim that the assignment of the mobile unit employees to work overtime, instead of the Claimants violated the Agreement. The Board based its finding on prior arbitral decisions and the clear language within the Rules cited by the Parties. The Board agrees with the Carrier's position that the assignment of task to a less senior welder did not violate the Agreement. The Organization has the burden of providing evidence that the Agreement was violated. Here, the evidence does not support a violation of the Rules cited by the Organization.

The Organization cites Rule 24 as being violated. Rule 24 states:

FORTY HOUR WORK WEEK

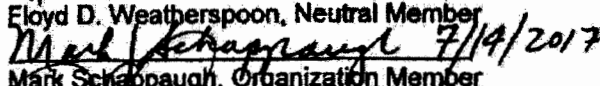
J. Work on Unassigned Days- Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have (40) hours of work that week; in all other cases by the regular employee.

The Board acknowledges that seniority "is one of the most important cornerstones upon which collective bargaining agreements are made." (See, Organization submission). Rules 2 and 5 of the collective bargaining agreement outlines the rules on how seniority is to be applied when employees are considered for positions. But those Rules do not limit the Carrier's right to make assignments and tasks within a classification, especially when the employees are within the same classification. The Welders who are assigned to Headquarters and the Welders assigned to the Mobile Gang are in the same classification. Had the employees been in different classifications the outcome may have been different. Here, the Agreement does not limit the Carrier in making daily assignments within the classification of employees. The Rules cited by the Organization outlines seniority rights of employees. But the seniority rules are not applicable to the facts before this Board. Likewise, Rule 24 covers situations where an unassigned or extra employee who will not work forty (40) hours in a week may receive an assignment. The language in Rule 24 doesn't support the Organization's arguments.

AWARD: The Claims are Denied.

July 1, 2017


Eloyd D. Weatherspoon, Neutral Member


Mark Schappagh, Organization Member


Joe Heenan, Carrier Member