

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
CN – WISCONSIN CENTRAL RAILROAD**

Case No. 53

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Welder Helper Stephen Lewein to perform the duties of a welder on July 25, 2009 (Carrier’s File WC-BMWED-2009-00038).
2. As a result of Part 1 above, Welder Andrew Hegeman shall be compensated for eight (8) hours’ pay at the welder’s time and one-half rate of pay.”

FINDINGS:

The Organization filed a claim on the Claimant’s behalf, alleging that the Carrier violated the parties’ Agreement when it assigned a welder helper to perform welding duties on the switch at South Slinger Pass on Saturday, July 25, 2009, rather than assigning this work to the Claimant, who has established and holds seniority as a welder headquartered at Burlington, Wisconsin. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because Rule 22 clearly and unambiguously provides that the work at issue is to be offered to the senior welder and not to a welder helper, because it is not germane that the Claimant was observing a regularly scheduled rest day on the claim date in that the Claimant was entitled to preference for this work as the senior active employee in the required job class, and because such work typically is not performed by welder helpers unless they are working under the supervision and guidance of an experienced and

qualified welder. The Carrier contends that the instant claim should be denied in its entirety because the Organization has not met its burden of proof that the Claimant was entitled to additional overtime when it is unrefuted that the welder helper was regularly assigned to work on weekends and it was proper for the welder helper to perform this normal and customary work under the supervision of a foreman, because there is no basis for the Organization's implication that the Claimant was the exclusive incumbent for making all welds on a rest day where a regularly assigned weekend crew was performing weekend work, and because Rule 22 has not been violated.

The parties being unable to resolve their dispute, this matter came before this Board.

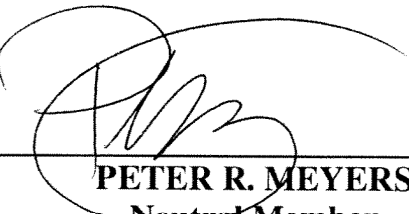
This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier acted in violation of the Agreement when it failed to call the Claimant to perform the welder duties on July 25, 2009, and instead assigned a welder helper to perform that work. Consequently, the claim must be denied.

The record reveals that the Claimant was the welder in this Wisconsin Central Seniority Territory and his regular assignment was Monday through Friday, 7:00 a.m. through 3:30 p.m. The Carrier had a welder helper perform the welding work on Saturdays and Sundays as part of his regular scheduled assignment. The welder helper was qualified to perform the welds that were made on the dates in issue. The welder helper performed the work under the supervision of the weekend foreman.

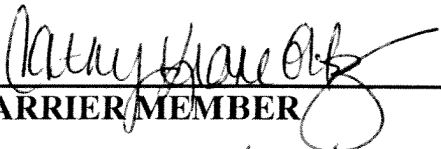
Although the Organization states that the Carrier's action in allowing the welder helper to perform the work on the weekend rather than calling in the Claimant was a violation of Rule 22, this Board disagrees. The welder helper held a bulletined weekend assignment and worked the position during his regular tour of duty. There was no requirement that the Carrier bring in the Claimant on an overtime basis to perform the welds on Saturday and Sunday. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
DATED: 10/31/12



ORGANIZATION MEMBER
DATED: October 31, 2012

LABOR MEMBER'S DISSENT
TO
AWARDS 48 AND 53 OF PUBLIC LAW BOARD NO. 6915
(Referee Meyers)

Awards 48 and 53 of this Board involve the same Claimant and the same improperly assigned junior employee. In both cases, the Carrier violated the Agreement when it improperly assigned a welder helper to perform the duties of a welder, i.e., the Claimant. The Majority rendered the decisions on Awards 48 and 53 on the basis that the welder helper was qualified to perform the welder work. The Majority's basis for rendering the decisions is erroneous.

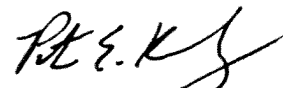
Rule 3 - Classifications of Positions establishes the different general classifications of positions. Included within those general classifications are the welder and welder helper, which are entirely separate and distinct classes of positions and have entirely separate and distinct qualifications. The separation and distinction of classes of the welder and welder helper is further exemplified by the fact that a welder is a Grade 2 pay rate position while a welder helper is a Grade 5 pay rate position. Rule 22 - Overtime gives the senior active employee in the required job class preference to the performance of overtime work ordinarily and customarily performed by them.

The Claimant has established welder seniority and possessed full qualifications as a welder. Moreover, the Claimant was the regularly assigned welder. The junior employee that was assigned to perform the disputed welder work neither held welder seniority nor possessed full welder qualifications. The Carrier required welder work to be performed and was therefore required to assign the senior, qualified employee in the required welder job class to perform the welding work. Accordingly, the Carrier was required to give preference and assign the Claimant. However, the Carrier failed to do such and instead assigned the junior employee who, again, did not possess welder seniority and was not fully qualified as a welder.

Furthermore, the Carrier maintains that it was not required to call and assign the Claimant to perform the work on overtime when the junior employee was performing the disputed work during his regular assigned straight time hours. The Majority supported the Carrier's position, albeit erroneously. The Carrier's, and ultimately the Majority's position, is incorrect because it is premised upon the Carrier's unsupported contention that the welder helper was qualified, which he was not. It is also incorrect because it ignores the basic fact that work of a class belongs to a class and the junior employee simply did not possess seniority or qualifications in the welder class and he therefore had no Agreement right of preference to the welder work over that of the Claimant.

The Majority rendered awards that are contrary to the undisputed facts of the cases and which fail to find their essence in the Agreement and, therefore, I dissent.

Respectfully submitted,



Peter E. Kennedy
Employee Member