

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 428

Case No. 428

File 890415

Parties to Dispute Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (Former Missouri Pacific Railroad)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 1, 2, 11 and 14 of the Schedule Agreement and the October 17, 1959 National Agreement, Sections II and III; of the Railway Labor Act Sixth and Seventh Provisions when Mr. C. E. Morris was assigned to the position of Welder Helper at Shreveport, Louisiana effective January 27, 1989.

(2) Claim in behalf of Mr. Morris for eight (8) hours each work day, including overtime and holidays accruing to him beginning January 27, 1989 at the difference of \$0.80 per hour, continuing.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Carrier, on January 16, 1989, advertised via Bulletin #TP00005 a Welder/Helper vacancy on Gang 1757 with an hourly rate of pay of \$12.46. The Claimant C. E. Morris, bid for said position and was awarded the Welder-Helper position on January 27, 1989. The Welder-Helper, as the title indicates, assists the Welder. He performs various duties, which include welding in the absence of the Welder, watching for trains or other machines while the Welder welds and other general duties as assigned by the Welder. Such duties can include incidental grinding of the weld with a hand held grinder.

The BMW General Chairman filed the instant claim on March 23, 1989 alleging that the Claimant was performing "grinder/operator's functions" which pay \$13.26 an hour or an \$.80 an hour differential.

The Organization argues that it agrees with the Carrier that on the rest of the former MOP they have Welder and Welder/Helper Gangs. However, it is alleging that on this territory (the old T&T) they only have a Lead Welder, a Grinder Operator and a Helper.

The Carrier, in the handling of this dispute and without prejudice to its position otherwise, bulletined said

Welder/Helpers position at Grinder Operator's rate until the dispute was resolved.

When grinding is required full time, a position therefor is posted on the District (Southern District-North) as per scope rule. Here, no such need existed. Grinding is not reserved exclusively to any BMW classification under their scope rule.

The instant issue was raised and decided previously on the property by Award No. 21091.

The pertinent part of the applicable Scope Rule reads:

"These rules govern the hours of service and working conditions of all employees herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foreman) as follows:

(F) Blacksmiths
Blacksmith Helpers
Welders
Welder Helpers
Grinder (Southern District-North)"

The introduction of continuous welded rail (approximately 1/4 of mile in length) in lieu of regular bolted rail (39 or less feet) minimized the need for grinding abutting rail ends.

While Carrier did employ gangs constituting Lead Welder, Welder Grinder and Welder Helper, the replacement of the bolted rail with continuous welded rail cause the Carrier to reduce its gang size. Hence, Welder and Welder-Helper became the standard gang size, the same as that on the rest of the system. The need for using a full time Grinder no longer existed. The classifications of Welder and Welder Helper existed and thus their utilization.

In a dispute involving out of face cross grinding by Track Forces on rail ends, between these same parties, (BMW and Texas and Pacific Ry) denying Award 21091 in the claim therein held:

"We cannot agree with the Petitioners contention that there was an unchallenged showing of exclusive performance by welding forces. The two-statements quoted on the property cannot be construed to establish

a system-wide exclusive past practice with respect to the grinding work; they do not purport to relate to anything except the particular experience of the individual signing the statement.

We have previously considered the Scope Rule of this Agreement and have characterized it as a general rule which does not define or reserve work (Awards 17538 and 17711). The burden was on the Petitioner to establish by evidence the existence of a system-wide exclusive past practice; this burden of proof was not met and for this reason the Claim does not have merit (Award 19921 among many others)."

The Carrier has assured the Organization that if a need exists for full time grinding positions that it will advertise therefor.

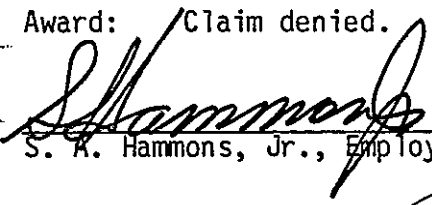
There has been no showing that the Carrier was arbitrarily changing a job title. Nor in the alternative was it shown that the Carrier was discontinuing one higher rated position and establishing another position at the lower rate of pay to perform the same work simply for the sake of economics. The record absent proof to the contrary shows a claim made solely to protect higher rate of pay.

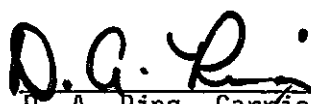
The record reflects that Claimant had bid in on Bulletin No. 48-A, a Welder-Helper's position on a two man gang in 1983, some 6 years previous. He bid in the contested two man gang helper position January 27, 1987. There is no evidence that the Claimant's assumed and required duties are any different now than in 1983.

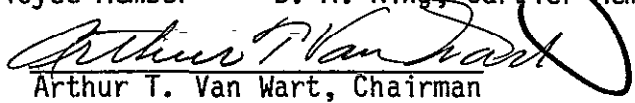
Part 1 of the Statement of Claim as to jurisdiction would rightfully belong in a U.S. District Court. Allegations only have been made. Absent a proffer of proof thereon they remain as allegations. However, a contractual matter, they are found to be without merit.

In the particular circumstances, this claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member