

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 429

Docket No. 429
File 890416

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

Statement of Claim:

(1) Carrier violated the Agreement, especially Rules 1, 2, 11 and 14, also the October 14, 1959 National Agreement, Articles II and III, and, the Railway Labor Act "General Duties" Sixth and Seventh Provisions when Mr. J. P. Reed was assigned to the position of Welder instead of Lead Welder.

(2) Claim in behalf of J. P. Reed for difference in rate of pay between Welder and Lead Welder for each hour worked, or eight (8) hours per work day, plus holidays falling therein, and any overtime accruing to him, beginning January 27, 1989, continuing. Claim is also for seniority as of January 27, 1989 as a Lead Welder.

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

The position of the Welder headquartered on line in the vicinity of Longview, Texas was bulletined "Temporary" due to the incumbent thereof Welder R. W. Horn being off injured. Welder Helper J. P. Reed, the Claimant, bid in the Temporary Vacancy of Welder and was assigned same effective January 27, 1989. Two months later, the BMWE submitted a claim requesting the difference in pay between a Welder's rate and a Lead Welder's rate beginning January 27, 1989 and continuing. They alleged:

"Mr. Reed is performing the same duties as a 'Lead Welder' such as carrying the time roles and having one (1) employee under his supervision. He gets the PX line up and tracking time, orders necessary material and is in charge of the assigned tracks and any arc welders and grinders. Mr. Reed is responsible for lining up each job and seeing that it is done as safely and efficiently as possible. His duties are identical to that of a 'Lead Welder' who gets a higher rate of pay than a Welder."

The advertised vacancy of Welder on Welding Gang 2359 was owned by R. W. Horn who had been assigned thereto in May of 1983.

The Claimant was first assigned as a Welder in 1986 when he was assigned to a position of Welder on a two man gang.

The record does not reveal any cause for the instant claim. In fact when the owner of the temporary vacancy, Mr. J. P. Reed, bid in the Welder's job in 1986 he had either no cause to or he failed to, find fault when he was first assigned the position of Welder on a two man gang. The bulletin then, as now, advertised the position of Welder and not Lead Welder. As we pointed out in our Award No. 84:

"The Bulletin in this case clearly stated the headquarters locations; there was no protest thereof at that time and the men freely bid the job under the conditions stated in the Bulletin."

Third Division Award No. 21091 from the old T&P property involved claims of a Welder and Welder Helper because it was alleged that the Carrier improperly "assigned members of a track gang to perform out-of-face cross-grinding of all rail ends instead of using a Welder and Welder Helper." In denying the claim that Board held:

"The scope rule of the Agreement is clearly general and reserves no work, per se, to any class of employee. Since seniority rights can only be considered when the right to work is established, see Awards 15943, 17493 and 20417, it was incumbent on Petitioner to present evidence and argument that the work was reserved exclusively to Welders (and/or Grinders). We cannot agree with Petitioner's contention that there was an unchallenged showing of an 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 did not purport to relate anything except the particular experience of the individuals signing the statement.

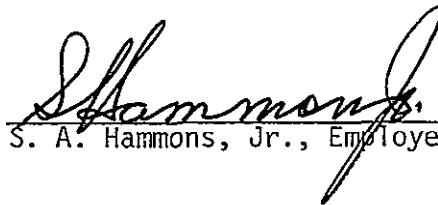
We have previously considered the scope rule of this agreement and have characterized it as a general rule which does not define or reserve work (Award 17538 and 17711). The burden was on Petitioner to establish by evidence the existence of a system-wide exclusive past practice; this burden of proof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

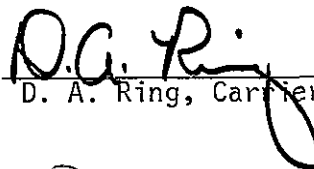
Superintendent Ron Short, on April 28, 1989, stated the answer to the issue attempted to be raised. The position of a Lead Welder can only be in order when there may be more than one Welder in the Gang. However, in any event, Claimant Reed is only filling the Temporary Vacancy of a


Welder.

There surely can be no cause raised now for a rate differential that never faced the owner of the Temporary Vacancy, R. W. Horn, who held the Welder job since May 1983. There appears to be no merit to the claim and it is denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


D. A. Ring, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued November 26, 1990.