

SPECIAL BOARD OF ADJUSTMENT NO. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
And
ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM:

1. The Carrier improperly rearranged the work forces by installing electric and acetylene welding equipment in trucks assigned to Work Equipment Operator and issued instructions to these Repairmen to use such welding equipment in making repairs to the Carrier's Roadway Equipment.
2. The Carrier shall restore the work assignments of these Work Equipment Repairmen to what it was, prior to the issuance of the referred-to instructions dated April 4, 1966, addressed to "All Leading Arc Welders and all Repairmen," signed by B; Geier, Engineer Work Equipment.

FINDINGS:

This claim is predicated on Petitioner's contention that Carrier violated applicable agreements by rearranging work forces and assigning the work of welding in making repairs to roadway equipment repairmen rather than to arc welders.

Carrier contends that the claim is barred on procedural grounds since Petitioner neglected to reject the denial decision of Assistant Engineer Walter, one of Carrier's grievance representatives, within the time prescribed by Article V of the August 21, 1954 Agreement. This procedural point lacks merit and must be deemed waived since Carrier's representative at the very next step in the grievance procedure failed to raise any time limit objection whatever.

Carrier further maintains that the work in question does not belong to arc welders and may properly be assigned to roadway equipment repairmen. The burden of proof with respect to this critical issue rests with Petitioner. No Agreement provision directly or indirectly supports the claim and the only evidence that bears upon the issue are statements issued on April 28, 1961, by Carrier's Assistant Chief Engineer staff office. The statements list as one of the "Types of work performed by System Welders on Former Erie Railroad" the following:

"Repairs frogs, switchpoints, rail ends, miscellaneous track material and track equipment by welding, by using either electric or oxygen-acetylene welding equipment."

The statements list the following as one of the "Types of Work performed by Work Equipment Repairmen on Former Erie Railroad:"

"Uses oxygen-acetylene welding outfits to the extent required to cut and bend iron, heat parts, etc., for assembly required in the course of repairing work equipment."

While the statements of April 28, 1961, list the types of work performed by the employee classifications in question, they do not constitute persuasive proof that only system welders are entitled to perform the disputed work and that roadway equipment repairmen must be barred from those duties. These statements are not the equivalent of the management operating rules considered by the Third Division in Awards 4848 and 5261 that have been emphasized by Petitioner. In Award 4848, the Board found that water service pumpers had the exclusive right to operate diesel fuel pumps because only their job classifications were contemplated for such work at the time the Scope Rule was written and because the only other expression of intention regarding the matter was an operating rule provision that the water service foreman was "in charge of and responsible for" that work. Because of a substantially similar operating rule considered in the light of a seniority provision, a section crew was held in Award 5261 to have exclusive rights, in the absence of an emergency or a need for special skills, to work on an unassigned work day on the section of track to which it was regularly assigned. Awards 4848 and 5261 are, therefore, not controlling in the instant case because they concern rules and circumstances that are not present here.

We find no valid basis in the applicable agreement or record for finding that the work in question belongs only to system welders and may not be performed by roadway equipment repairmen. Accordingly, the claim will be denied.

In arriving at this determination, we have not been impressed by Carrier's argument that a denial award is required by Shop Crafts Agreement's provision reading as follows:

"At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

The Shop Crafts Agreement has not been incorporated by reference or otherwise agreed to in any applicable contract between the Carrier and Brotherhood of Maintenance of Way Employees. It has no bearing whatever upon the present dispute which is concerned with an interpretation of Carrier's agreements with the Maintenance of Way Organization. We, therefore, find no merit and have accorded no weight to Carrier's point regarding the Shop Crafts Agreement.

The fact, however, that Chief Engineer Bush may have relied solely on the Shop Crafts argument in his denial letter of October 11, 1966, does not mean that Petitioner's claim must prevail. Both Mr. Walters and Mr. Carroll made it clear, in their letters of denial, that Carrier had not abandoned its contention that the claim is not supported by the applicable rules. In any event, the burden of proof still rests with Petitioner and neither the rules cited nor the facts presented have satisfied that burden.

AWARD: Claim denied.

Dated at New York City this 6th day of February, 1969.

/s/ Harold M. Weston

Harold M. Weston, Neutral Member

/s/ A. J. Cunningham

A. J. Cunningham, Organization Member

/s/ R. A. Carroll

R. A. Carroll, Carrier Member