

Award No. 1082

Docket No. 997

2-CCC&StL-BM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 54, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

**THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY**

(The New York Central Railroad Company, Lessee)

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement and particularly Rules 13 and 91, Boilermaker Clarence Brown is entitled to be additionally compensated for his services as a layer-out continuously during the period January 11 to September 14, 1943, by the carrier.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a large locomotive shop at Beech Grove, Indiana, where the claimant, Clarence Brown, is regularly employed as a boilermaker, and whose seniority date as such is September 29, 1938.

The carrier's 1943 locomotive building program, particularly the building of new streamlined locomotive steel tender tanks created more work of laying-out than Boilermaker T. J. Carr, the regularly assigned layer-out could perform. So, effective January 11, 1943, the carrier assigned Boilermaker Clarence Brown to laying out steel sheets preparatory to the erection, by other boilermakers, of these new streamlined locomotive tender tanks. Mr. Brown, the claimant, continued in this assignment and handled all of the laying-out work except such small part of it as Boilermaker Carr, the regular boilershop layer-out, could perform, without delaying other work of laying-out in the shop. When Boilermaker Carr could devote some time to these new locomotive tender tanks, he and the claimant performed the same type of work.

The carrier returned Boilermaker Brown on September 14, 1943, to the job which he held when assigned to the laying-out work of these locomotive steel tender tanks on January 11, 1943.

The carrier paid the claimant, Boilermaker Brown, for his services during the period January 11 to September 14, 1943 at his own rate, the minimum boilermaker's rate, and the claim that he be paid the differential rate applicable to boilermakers assigned as layer-outs has been declined by the highest designated officer of the carrier to whom such claims are referable.

The controlling agreement is dated October 1, 1923.

4. SECOND DIVISION AWARD NO. 1007 CITED BY THE EMPLOYEES, HAS NO BEARING ON THE QUESTION HEREIN INVOLVED.

In Award No. 1007, the claimant admittedly was used temporarily on the position for which the rule in effect directed payment of a rate higher than his own. In the instant case the claimant performed no such service. He simply was delegated to perform tank department work which was temporarily performed in the boiler department, and which work he himself on other occasions has performed in the former department without any differential rate ever having been allowed or claimed. There is no similarity between the two situations and the decision contained in Second Division Award No. 1007 should not, therefore, influence the Board's decision in this case.

CONCLUSIONS:

1. There is no showing by the employees in support of the allegation that Boilermaker Brown was assigned to work with or in place of the regularly assigned layer-out, or that he in fact performed any work during the period in question of the character for which the carrier pays the differential rate. The claim based on such premise should be dismissed.

2. Neither the interpretations placed on the rules by authoritative bodies, nor the practice which has prevailed since the rules were adopted, support the employees' contention that payment of the differential rate should be allowed for the performance of lay-out work in connection with the construction of or repairs to locomotive tenders.

3. The employees have submitted no evidence which would otherwise justify an affirmative award in this case and the request of the employees should therefore be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Parties to said dispute were given due notice of hearing thereon.

Rule 66 of the current agreement is the boilermaker classification rule and shows the type and character of work to which the boilermakers are entitled. The material part of Rule 69 is as follows:

"Flange turners, layer-outs, and fitter-ups shall be assigned in shops where flue sheets and half side sheets or fire boxes are flanged, removed and applied. One man may perform all these operations where the service does not require more than one man. If not fully engaged on the above work, these employees may be assigned to any work of their craft."

It provides for the assignment of layer-outs etc., but it will be noted that it restricts the assignment of layer-outs to where "flue sheets and half sheets or fire boxes are flanged, removed and applied."

The material part of Rule 91 is as follows:

"Boilermakers assigned as boiler inspectors, also flangers, layer-outs, and autogenous welders shall receive five (5) cents per hour above the minimum rate paid boilermakers at the point employed."

Under Rule 91, the additional pay is provided where boilermakers are assigned as layer-outs. Rule 69 covers assignments of layer-outs, thus we come to the conclusion that Rule 91 provides for additional pay only when layer-outs are assigned in conformity with Rule 69.

Boilermaker Carr is the regularly assigned layer-out in the Boiler Department and so assigned in conformity with the provisions of Rule 69 and paid the differential rate of layer-out work as prescribed in Rule 91. There is a dispute in the record in regard to just what work Brown performed, and the case will have to be remanded to the parties to ascertain the facts. If Boilermaker Brown was assigned to work with or in place of Carr, and Brown in fact performed the same class of work for which Carr is paid the differential rates, then on the days this work was performed Brown would be entitled to the increased pay. If he was not assigned and did not perform the same class of work for which Carr was paid the differential rate the claim shall be denied.

AWARD

Claim remanded in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.