

Award No. 238

Docket No. 231

2-IC-BM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That boilermakers at Paducah and other points on the Illinois Central System who operate the oxyacetylene cutting torch must be paid 5¢ per hour above the minimum rate of boilermakers as per Rule 34, and that cutting torch operators be paid a minimum of one (1) hour for each period the cutting torch is used less than one (1) hour; after four (4) hours, the differential rate applies for the day. Wage adjustment to be retroactive to April 1, 1936.

EMPLOYES' STATEMENT OF FACTS: On April 8, 1936, management agreed to pay a 5¢ differential to boilermakers at Paducah and other points on the system for the use of the cutting torch. Since that date management has paid the differential to some cutting torch operators and declined to pay others. Cutting torch time is now being paid on an accumulated minute basis with a minimum allowance of one (1) hour for each sixty (60) minutes the torch is used, and if more than sixty (60) minutes are consumed during the eight (8) hour period, the operator is only paid on actual minutes worked within the eight (8) hours.

POSITION OF EMPLOYES: We are herewith quoting "Position of Employees" from case as previously handled before Division Two and withdrawn April 7, 1936, which will furnish the Board the history of the case:

"It has been the established practice for years to allow the differential of 5¢ per hour above the rate paid the Mechanics when using the cutting torch on work other than cutting scrap at Paducah Shop.

"On June 10, 12 and 13th the employees assigned to the cutting torch were notified by their Foreman, that he was advising them that the carrier had discontinued the differential rate of pay, retroactive to June 1, 1935, upon the presentation of this grievance to the General Supt. Motive Power, this was corrected and the differential rate of pay was allowed to continue until June 16, 1935, when the differential rate of pay heretofore allowed on this class of work was abolished, which we contend to be in violation of Rules 150 and 34 of the current Agreement.

well substantiates the carrier's contention that they are applying the rule as the negotiators intended it to be applied. Inasmuch as the carrier is applying the rule as was intended, there can be no violation of the rule. Therefore, the carrier requests that the claim be denied.

OPINION OF THE DIVISION: The issue before this Division of the National Railroad Adjustment Board narrows down to the interpretation of the meaning of the words used in the second paragraph of Rule 34 reading as follows:

"When performing the above work for four (4) hours or less in any one day, employees will be paid the welder's rate of pay on the hourly basis with a minimum of one (1) hour; for more than four (4) hours in any one day, welder's rate of pay will apply for the day."

The record of this case contains much material relating to the question of the right to the payment of the differential and to the question of whether all men entitled to it have been paid. These questions are outside of the present case. The carrier does not disagree that the differential of five cents an hour is to be paid. If there are cases where an employee, entitled to it, has not received his differential, it is a matter for negotiation between the parties. Likewise, the question of whether the carrier shall assign operators regularly or intermittently, to the work in question, is not before the Division in this case.

The disagreement between the employees and the carrier in the present case is over the interpretation of the meaning of Rule 34 in the case of the intermittent use of the cutting torch and the method of accumulating the time. A series of examples will explain the situation. If the cutting torch is used once only in a day for a few minutes, the operator gets the differential of five cents for an hour. If the torch is used over four (4) hours at a time, the operator gets the differential of five cents an hour for the whole day. If the torch is used less than four (4) hours, in a stretch, the operator gets the differential for the time he actually uses the torch plus the time to make an even hour; that is, if an hour and a half are used, the operator gets the differential for two (2) hours. These examples are not in dispute. It is when the operator uses the torch two or more times that the dispute over the differential arises. The employees claim that working a part of separate clock hours entitles the operator in each instance to a full hour. For example, more than four (4) uses of the torch in separate clock hours makes more than (4) hours use of the torch and entitles the operator to the differential for the day, even though each separate use of the torch is no more than a few minutes.

The carrier claims that the time should be accumulated and the resulting amount would be the time on which the differential should be paid, with the exception that one (1) hour is to be paid as a minimum, if the torch is used at all.

It was contended in argument, by the employees, that the general practice has been to allow one (1) hour for any hour in which it was used.

It was contended, on the other hand, by the carrier that such has not been the general practice.

Conclusive evidence was not presented on this point by either side and none appears in the record of the case. Affidavits and letters were presented by employees to show the practice of paying for the accumulated time had not prevailed, but an examination of these documents indicates that it was not the intermittent use of the torch which was referred to, but the regular bulletined use. The signers state that they did not know of any intermittent use, hence the application here is of little value.

The Division is limited in its decision, to the interpretation of the words exactly as they are used in Rule 34. Reading those words, the conclusion is reached that their meaning is as follows:

(a) When the cutting torch is used in one stretch for more than four (4) hours in a day, the differential of five cents an hour is to be paid for the entire day.

(b) When the cutting torch is used in one stretch four (4) hours or less, the differential is to be paid for the time the torch is used, with a minimum of one (1) hour if the torch is used at all.

(c) When the torch is used two or more times in a day, the actual time used is accumulated and if the accumulated time exceeds (4) hours, the differential is to be paid for the day. If the accumulated time is four (4) hours or less, the differential is to be paid on an hourly basis for the time the torch is used, with a minimum of one (1) hour if used at all.

It is understood by the parties that if there is a fraction of an hour in the accumulated time, the differential is paid for a full hour.

It is understood that all time used in preparing for the use of the cutting torch and all time in disposing of it will be counted as a part of the time on which the differential is allowed.

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.

AWARD

In accordance with the above opinion of the Division the claim of the employes is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1938.