

Award No. 306

Docket No. 279

2-MP-FO-'39

**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. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That E. L. Fryer, laborer, Falls City, Nebraska, be compensated for all time lost subsequent to May 17, 1937, account Boilerwasher J. J. Wightman performing work as a laborer.

EMPLOYEES' STATEMENT OF FACTS: On May 17, 1937, E. L. Fryer, laborer, Falls City, Nebraska, was laid off account force reduction; he was called back to work in place of O. Cline May 24, 25, and 26, was again laid off account Laborer O. Cline reporting back to work. When force reduction was made May 17, J. J. Wightman, boilerwasher, was retained as a boilerwasher, but was used as a laborer at boilerwasher's rate.

POSITION OF EMPLOYEES: Prior to November 1, 1934, boilerwashers and coach cleaners were covered in the agreement between the Missouri Pacific Association of Power Plant Employees and Boilerwashers, Coach Cleaners, Shop, Repair Track and Roundhouse Laborers, and when the agreement between the International Brotherhood of Firemen and Oilers, Shop and Roundhouse Laborers and the Missouri Pacific Railroad Company was signed on November 1, 1934, the boilerwashers and coach cleaners were excluded from the agreement between the International Brotherhood of Firemen and Oilers, Shop and Roundhouse Laborers and the boilerwashers were included in the agreement between the International Brotherhood of Boilermakers and Helpers and the Missouri Pacific Railroad Company, as per Rule 64 quoted below:

"Rule 64. (a) Boilerwashers will be included in this agreement and receive overtime as provided herein, except for services performed continuous with and in advance of regular work period, they shall be compensated therefor on the minute basis at rate of time and one-half time, and when notified or called to perform work not continuous with the regular work period will be allowed a minimum of three hours for two hours work or less; if held on duty in excess of two hours, time and one-half time will be allowed on the minute basis.

(b) They may be assigned to any other unskilled work during their eight hour period of service."

and the coach cleaners were included in the agreement between Missouri Pacific Railroad Company and the Brotherhood Railway Carmen of America, as per Rule 139, quoted below:

September 1 to 11 inclusive:

17 hrs. building fires
11 hrs. boring flues
20 hrs. washing boilers
40 hrs. shop expense*

88 hrs.

NOTE:—*Shop expense is a clearing account to which is charged items of expense of shops and other places at which mechanical work is done, not assignable directly to specific accounts.

As outlined above, Wightman was continued in service as a boilerwasher following the reduction in force on May 17, 1937, performing much the same nature of work that he had performed prior to May 17, 1937. Wightman did not displace Fryer or any other laborer and Fryer's layoff had no bearing whatsoever upon the work assignment of Wightman, either prior, during, or subsequent to the date he was laid off.

POSITION OF CARRIER: That the displacement of Mr. Fryer in force reduction at Falls City roundhouse on May 17, 1937, was handled in strict accord with our wage agreement with the firemen and oilers' organization in that Fryer was the junior man employed as a laborer as of the date force reduction became effective.

That the service performed by Wightman, a boilerwasher prior, during, as well as subsequent to the date Fryer was laid off as a laborer, were in strict accord with our wage agreement rules with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, and System Federation No. 2, Railway Employees' Department, A. F. of L., Mechanical Section thereof, composed of:

International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship
Builders and Helpers of America
International Brotherhood of Blacksmiths, Drop Forgers
and Helpers
Sheet Metal Workers International Association
International Brotherhood of Electrical Workers
Brotherhood Railway Carmen of America

That there is no basis either under our schedule rules with the employees or established practices thereunder to support the employees' claim.

That same should be properly denied, there being no rule under our wage agreement to support the employees' contentions.

OPINION OF DIVISION: The facts in this case are that a laborer, under the contract between the carrier and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, was displaced in a layoff and claims that a boilerwasher thereafter performed his work as laborer. He claims compensation for the time lost by him while the boilerwasher performed roundhouse and shop laborer's work.

There are two agreements in effect: one known as the shop crafts agreement and the other the agreement with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers. Boilerwashers come under the shop crafts agreement. The laborer in this case was under the agreement with the International Brotherhood of Firemen and Oilers, etc. The employees contend that the laborer was displaced and his work was performed by a boilerwasher. The carrier contends that the agreement specially permitted boilerwashers to be assigned to unskilled work under a clause in the shop crafts agreement, relating to boilerwashers, which reads: "They may be assigned to any other unskilled work during their eight-hour period of service."

The carrier contends that the boilerwasher in this case was assigned in accordance with the above provision to do certain laborer's work, but the carrier also contends that the work performed by the boilerwasher was the same work that was performed prior to the layoff of the laborer.

Two questions must be considered in arriving at a conclusion in this case. First, the meaning and application of the agreement and, second, the determination of the question whether the boilerwasher in this case performed laborer's work.

First, as to the agreement. The words quoted above from Rule 64, paragraph B, authorized the use of a boilerwasher in unskilled work, but it cannot be accepted that those words authorize the use of a boilerwasher in unskilled work to the exclusion of the laborers doing such work under the agreement with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers. The evident intention of the rule was to permit boilerwashers to perform unskilled service as an incidental matter, but not to perform such service as their major work, and thereby deprive workers, under another contract, of their work.

In the present case, E. L. Fryer, a laborer, was laid off and Boilerwasher Wightman was retained and was given a part or all of the work which had previously been done by Fryer. The shop record indicates that Wightman had all along been doing a considerable amount of laborer's work. While the record is not exact, it is apparent that a majority of Wightman's work was laborer's work. The record discloses that in April, Wightman had thirty-two (32) hours out of two hundred and eight (208) engaged in washing boilers; in May (the month of Fryer's layoff), Wightman had 56 hours' boilerwashing out of 248 hours; in June, 48 hours out of 240; in July, 36 out of 200; in August, 12 out of 104. Wightman was, therefore, for most of the time a laborer performing incidental service as a boilerwasher. Boilerwashers are clearly not authorized, under Rule 64, to take over the work of roundhouse and shop laborers and deprive such laborers of their jobs. If a roundhouse or shop laborer could thus be displaced and his work be handed over to an employe of another craft, under another agreement, the agreement between the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers with the carrier could be reduced to a scrap of paper. It cannot be assumed that it was the intention to permit the displacement, under the circumstances in this case, of roundhouse and shop laborers by workers from another craft.

Boilerwasher Wightman apparently continued to perform the duties he had previously performed, but also assumed a part or all of the duties of Laborer Fryer. If he had not assumed such duties, Fryer would not have been laid off, or, at least, would have been given part time work. Whether some of Wightman's work before the layoff was laborer's work is not an issue in this case. After the layoff of Fryer, it is apparent that Boilerwasher Wightman took over his work in addition to other work that he had previously performed. However, it must be noted that Fryer would not have been employed full time during the interval of the dispute, inasmuch as Wightman, with his own and Fryer's duties combined, was not employed full time each month and, in fact, in the month of August worked only 104 hours.

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

Claim sustained for such portion of the time lost by Fryer as was occasioned by reason of Boilerwasher Wightman taking over Fryer's work, the amount to be determined by the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1939.