

Award No. 324

Docket No. 338

2-IGN-BM-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

MISSOURI PACIFIC LINES

**INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Boilerwasher Otto Friske, San Antonio, Texas, be compensated for all time lost due to being furloughed, and a laborer used to displace him.

EMPLOYES' STATEMENT OF FACTS: On May 22, 1938, Otto Friske, boilerwasher at San Antonio, Texas, was notified that effective May 25, 1938, he would be furloughed.

On May 23, 1938, bulletin was posted advertising night boilerwasher position, specifying that bids on this job would be recognized from the laborers.

POSITION OF EMPLOYEES: Prior to the handling of the above mentioned dispute, the washing of boilers on night shift was performed by the labor gang working on a split rate, receiving boilerwashers' rate when washing boilers, and laborers' rate when any other than boilerwashers' work was performed by these men.

This matter was taken up with the railroad management on a grievance, contending for a regular assignment of boilerwasher on the night shift at San Antonio roundhouse. This case was terminated on March 16, 1938. The Board will note Exhibit A, letter from Mr. W. G. Choate, wherein he instructed that regular boilerwasher be assigned. Mr. A. DeLange, local chairman for the boilermakers, was notified of the agreement rendered by Mr. Choate, general manager. Mr. DeLange then requested a conference with Mr. S. J. Stark, master mechanic, concerning the establishing of a regular assigned boilerwasher on the night shift. The Board will note employees' Exhibit B, letter of Mr. DeLange, wherein he states that Mr. Stark consented to request made by the committee; that is, that the washing of boilers is listed in the agreement as boilermaker helpers' work. Rule 59, captioned "Boilermaker Helpers," paragraph (b), sub-caption "Boilerwashers" reads as follows:

"(b) 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

Rule 59

"BOILERWASHERS"

(b) 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. Present rates of pay to be continued.

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

The above covers the rules applicable to boilerwashers and are Sections (b) and (c) of Rule 59. Under seniority Rule 19, the boilerwashers were given a sub-division under boilermakers' craft. They do not hold any seniority as boilermaker helpers, nor do boilermaker helpers hold any seniority as boilerwashers.

In placing the boilerwashers under the shop crafts agreement, no seniority rights were granted to any craft or class of employees to boilerwasher positions, and no change was made in the handling and promotion of these men from shop laborers, as has existed for the past fifteen years or more. It will be noted that Section (c) of Rule 59 reads as follows:

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

From the above it will be seen that when rule was placed in agreement, it was understood and agreed that boilerwashers would continue to be taken from the shop laborers ranks regardless of their representation, as a boilermaker helper could not be used to perform laborer's work when not engaged in washing boilers, this work being covered by the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers agreement, and is a separate seniority division from boilermaker helpers. The carrier, or the System Federation No. 14 representatives, are without authority to take the seniority rights of one class of employees and give them to another class of employees, as would be the case were boilermaker helpers allowed to take over seniority rights to positions of boilerwashers.

In the case complained of, Otto Friske, a boilermaker helper, with seniority date of March 7, 1935, and out of service account of reduction in force, through error, was assigned to position of night boilerwasher at San Antonio and worked on position from April 4 to May 25, 1938. When the error was discovered, he was removed and position was assigned to F. G. Hernandez, who had been washing boilers at night at San Antonio for the past ten years, and whose seniority as boilerwasher and laborer dates to September 7, 1926.

Otto Friske only holds seniority rights as a boilermaker helper, and was not entitled to the position of boilerwasher under terms of shop crafts agreement; therefore, he has suffered no monetary loss that his seniority as boilermaker helper would entitle him to.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

(a) The work of washing boilers has been placed in the boilermaker craft through the medium of paragraph (b) of Rule 59. Evidence of record shows that Otto Friske, furloughed boilermaker helper, was assigned to the new position of boilerwasher and worked in this capacity for a period of days when he was removed, the position was again bulletined and later assigned to Hernandez who held seniority as laborer. Otto Friske, by reason of his assignment to the position of boilerwasher and his work thereon, established rights in boilerwashers' seniority, and could not be displaced by an employe not holding seniority on this class of work.

(b) There are several complications in this dispute and there appears to be an absence of any clear understanding regarding the application and full intent of Rule 59 (b).

AWARD

1. If Boilermaker Helper Otto Friske desires the assignment, he shall be restored to the position of boilerwasher at San Antonio.
2. Claim for compensation is denied in keeping with paragraph (b) of the above findings.
3. If Otto Friske is not available, the position shall be bulletined.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1939.