Award No. 471
Docket No. 466
2-CRI&P-CRI&G-FO-'40

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

CHICAGO, ROCK ISLAND AND GULF RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That the carrier violated the current agreement in dispensing with the services of stationary engineers and firemen in power plants at Horton, Kansas; Herington, Kansas; Pratt, Kansas; Dalhart, Texas; Amarillo, Texas; El Reno, Oklahoma; Shawnee, Oklahoma; and El Dorado, Arkansas; and further, that such engineers and firemen be restored to their positions and fully compensated for their wage loss resulting from said violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: An automatic feed water and fire control system was installed in power plants at the points mentioned and as a result of the installation of such equipment, the regular engineers and firemen were laid off. The following list will show the dates such equipment was put into operation and the dates these employes were laid off:

Horton, Kansas	One boiler 9-27-38 " " 10- 5-38 " " 10-10-38 One engineer laid off 6-22-39
Herington, Kansas	Equipment put into operation 10-7-38 Engineer and two firemen laid off 10-14-38
Pratt, Kansas	Equipment put into operation 11-2-38 Engineer and one fireman laid off 11-12-38 One fireman laid off 11-11-38
Dalhart, Texas	Equipment put into operation 12-11-37 Two firemen laid off 12-13-37 Engineer laid off 12-22-37
El Reno, Okla.	Equipment put into operation 10-9-38 Two engineers laid off 10-10-38 One engineer laid off 7-16-39
Shawnee, Okla.	Equipment put into operation 10-22-38 Two firemen laid off 12-4-38 Engineer laid off 6-11-39
El Dorado, Ark.	Equipment put into operation 11-8-37 Three firemen laid off 11-13-37
Amarillo, Texas	(Plant operating through winter months only.)

plant, and likely install electric motors similar to those in use at East Des Moines, and if and when that is done there will be no need for a power plant attendant, either engineer or fireman, so even if Mr. Douglas did come back he would soon be displaced and would have to exercise his seniority rights, if possible, at some other point."

to which Mr. Tones replied in part as follows in letter of April 7, 1938:

"Your very kind answer to my recent letter received, it was very satisfactory in every respect, and fully satisfied the party involved, and relieved me of any further question regarding the request made. I was satisfied that the request could not be granted, but had no option but write you on account of fine services of Mr. Douglas in every way."

The above clearly indicates that the carrier and the representative of the employes with whom the agreement was negotiated were in complete agreement that it was not necessary to assign employes at plants where there was not sufficient work to justify their assignment. With this basic understanding it automatically followed that when automatic plants were installed and there was, therefore, no longer sufficient work to justify the assignment of power plant employes, the necessity for their assignment under the contract disappeared.

The very ruling of the National Mediation Board, as to the interchangeability of labor, in reaching its determination that the votes of the various classes of employes on the Rock Island should be combined in order to determine representation (this is set out under the carrier's statement of facts) supports the position of the carrier that it is permissible to use laborers and other classes of employes to do the work which forms the basis of the complaint of the employes in this case.

There being no violation of the present agreement the claim of the employes should 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.

The question here involved arises out of the installation of automatic systems in several power plants, incident to which, certain engineers and firemen were laid off. Following this, at certain of the plants, other classes of labor were utilized such as common laborers, mechanics and helpers of various trades and departments and roundhouse foremen to visit the plant periodically to see that it was working properly, making necessary adjustments, repairs, etc.; in other words, to do work theretofore done by the employes who were laid off. These other employes do not come under the firemen and oilers' agreement but are subject to other agreements.

The organization claims this to be in violation of Rule 1 (a) and (c) of their agreement and also, in one instance, of Rule 10. Rule 1 (a) and (c) are scope rules defining the duties of stationary engineers and stationary firemen. Rule 10 expressly provides that at power plants of 500 rated horse power or over at least one engineer shall be maintained. The above mentioned scope rule in paragraph g provides that none of the foregoing rules shall be so construed as to prohibit the railway from calling in men from other trades to perform maintenance and repair work when of a sufficient

volume that the regularly assigned power plant employes will be unable to perform it without interference with their regular duties or at points where there is not sufficient work to justify the employment of additional power plant employes. In each of the categories of the scope rule, that is, stationary engineers, water tenders, stationary firemen, power plant oilers, power plant mechanics and power plant helpers and laborers, the duties described are stated to be "where assigned will include while on duty."

The organization takes the position that its members are entitled to perform all of the services described in the scope rule connected with any power plant; this, notwithstanding the exception contained in paragraph g above mentioned and the fact that use has been made of paragraph g long before as well as since the installation of these automatic control systems.

The management takes the position that the agreement is applicable only where employes of the class described are assigned and on duty and, consequently, that if it takes them off no violation of the rule is involved in having the work performed by other employes. It also stresses particularly the fact that Rule 10 expressly requires the maintenance of at least one engineer in plants of 500 or over horse power as negativing any implication that Rule 1 imposes an obligation to maintain at all times or, in other words, to keep assigned at power plants employes performing the duties covered by Rule 1.

We think both of these contentions are too broad. The automatic systems were not in existence at the time the agreements were entered into. The carrier would be entirely within its rights to install them even though it resulted in the complete abolition of the work described in the scope rule. The scope rule itself does not in express terms state that the employes covered by it are entitled to the performance of all of the work in the class described. Such a right arises by implication. For there to be any contract at all there must be some ascertainable subject matter. In the absence of some limitation in the agreement it would necessarily be held that it contemplated all of the classes of service defined. Otherwise, according to the carrier's viewpoint, it would merely hold an option to give or withhold the performance of the work to the other contracting party as and when it saw fit. This would be a mere "will, wish or want" contract or, that is, no contract at all. Here there is unquestionably a contract and it has been under performance for many years. Furthermore, there is the express limitation of paragraph g and the well settled practice at the time of the adoption of the contract consisting in calling in other help to perform the excess over that which the regular employes could perform with deference to their other duties.

The conclusion, therefore, is that the petitioners are entitled under the contract, to perform all of that type of work incident to the operation of the new system which they performed prior to its installation. It appears that it was assumed that the new system would do away altogether with the necessity for the employes formerly maintained. It appears further, however, that the new systems were not so effective as that and illustrations are given concerning the plant at El Reno showing how it was repeatedly necessary for the night foreman to attend to the automatic plant because of its failure to function properly. This was duty of a type clearly coming within those described as pertaining to stationary engineers and firemen and theretofore performed by them. It is admitted that at Shawnee the plant is over 500 horse power and the carrier volunteers to make adjustment at that point. Further it appears from the evidence that plant at Horton, Kansas, has been entirely closed down since June 22, 1939, and, therefore, the question does not exist at that point. At Amarillo the plant was closed in May, 1939, and is fired occasionally only when engine work is necessary at that point.

The evidence is quite insufficient to determine the extent to which the duties of the employes represented herein have been transferred to others

and consequently insufficient to say the extent of relief that can be granted. The petition is for the restoration of positions and full compensation for wages lost at the points named. As indicated, in the case of Horton the plant has not been operated at all since June 22, 1939 and there has been no need for the same force at Amarillo as theretofore; indeed it is apparent that there is no basis to sustain a claim that the full complement of men displaced must be restored. On the occasions on which other employes were used to perform the duties formerly performed by those laid off, the agreement was violated and the men who were entitled to have performed the work are entitled to be paid therefor.

The matter will be sent back for a joint investigation and settlement on this basis. If the parties are unable to agree they may return the matter with specific evidence and detailed claim with respect to such violations as occurred.

AWARD

Claim disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1940.