

Award No. 703
Docket No. 668
2-TP-MPTofNO-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL
RAILROAD OF NEW ORLEANS**

DISPUTE: CLAIM OF EMPLOYES: That oxyacetylene torch operator (carman) E. J. Picone, be paid the five cents (5¢) differential rate provided in Rule 97 (a) from February 29, 1940, to the date he is restored to the position occupied during the period October 13, 1938 to February 29, 1940.

That the carrier disciplined oxyacetylene torch operator (carman) E. J. Picone, in violation of Rule 22 (a), when on or about February 29, 1940, upon using said torch four (4) hours, he was required to turn same over to another carman, and when on or about April 18, 1941, he was totally displaced as an oxy-acetylene torch operator by another carman.

EMPLOYES' STATEMENT OF FACTS: That E. J. Picone (carman) was assigned to oxyacetylene torch October 13, 1938, at Gouldsboro shops and worked at this assignment exclusively up until February 29, 1940, at which time Picone was instructed by Car Foreman Erlinger, to turn the torch over to Carman H. P. Delatte, or Carman R. J. Martinez, after four hours actual burning; meaning the time the torch was lighted. On April 18, 1941, Picone was totally displaced as oxyacetylene torch operator by Carman W. J. Owens, while this case was pending with Vice President James.

POSITION OF EMPLOYES: This complaint has been handled in accordance with the established practice of handling grievances coming under the present agreement. The officials with whom this complaint has been handled take the position that the rules do not require the payment of the 5¢ differential for preparing of torch which includes cleaning tips, connecting up the torch, changing tanks, or pushing cart from car to car, and straightening metal parts such as grab irons, sill steps, brake staffs, pin lifts, etc. Picone was only allowed to turn in time for the actual time the torch was lighted.

We offer proof to support the above statement, which is Manager Pennebaker's letter addressed to Local Chairman Rogers, under date of April 26, 1940, marked employees' Exhibit No. 1.

This complaint was made after decision was rendered on Award 427 by your Honorable Board, January 22, 1940. The above mentioned award was handled by the boilermakers on this property under System Federation No. 121. Rule 54 (a) which is a boilermakers' rule, reads in part as follows:

Will further state that the handling in this case is no different from similar handling of all other crafts at Gouldsboro, point involved, or other points on the Texas and Pacific Railway. Where a mechanic uses a torch he is paid the differential rate on a minute basis with a minimum of one hour up to and including four hours; over four hours he is paid the differential rate for the entire day. Our supervisors designate the mechanics who are to perform this work from day to day, using the ones who will best meet the requirements on the particular day.

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.

E. J. Picone was operating the cutting torch part time when the 5¢ differential was agreed by the parties as the proper rate for this work. The carrier continued to assign someone to the cutting torch when the service so required, discontinuing the use of E. J. Picone on this work subsequent to April 18, 1941, without showing just cause.

The question of having mechanics do the cutting on their respective work is not one here involved.

AWARD

E. J. Picone should be continued to be used on this class of work under like circumstances as was done prior to February 29, 1940, and paid in accordance with Rules 21 and 97 of the current agreement for such time he has been deprived of the work herein involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1942.