

Award No. 877

Docket No. 805

2-NYC-FT-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That carmen be used instead of helpers to operate the oxyacetylene tool at Ashtabula Scrap and Reclamation Plant, under the controlling agreement.

JOINT STATEMENT OF FACTS: At the scrap and reclamation plant at Ashtabula, Ohio, carmen helpers have been assigned to the duties of operating the oxyacetylene tool and have been paid the helpers' rate for operating same in connection with dismantling and cutting up obsolete bridge iron, rails, switches, frogs, signal material, locomotive boilers and tenders, wrecked cars, car material, miscellaneous machinery, etc., for scrap and other purposes.

POSITION OF EMPLOYES: We contend that the carrier violated the rules of the controlling agreement by refusing to allow mechanics to operate the oxyacetylene tool. Rule 33 reads in part as follows:

"In compliance with the special rules included in this agreement, none but mechanics and their apprentices in their respective crafts shall operate oxyacetylene, thermit or electric welders. * * *"

Rule 178 reads:

Autogenous welders shall receive five (5) cents per hour above the minimum rate paid carmen at point employed.

This rule in itself is clear. It shows that this work will be done by carmen and they will receive a differential rate of five cents per hour for performing same.

The note under Rule 33 reads as follows:

Mechanics who use the torch, either for welding or cutting operations, will receive the welders' rate of their craft, the time paid for to be in accordance with the second paragraph of Rule 33.

The second paragraph of Rule 33 reads as follows:

When performing the above work for four (4) hours or less in any one day, employees will be paid the welders' rate of pay on the

result in the abrogation of the rule and the restoration of the same arbitrary regulations to which the carrier objected in the National Agreement, and which it had every reason to believe would be eliminated by adoption of the agreed to rule.

The request 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 waived right of appearance at hearing thereon.

Rule 55 specifically provides that the work of scrapping "locomotives, boilers or tanks, cars or miscellaneous machinery, * * * will be done by helpers." At the time this rule was agreed to the cutting torch was a very necessary implement in scrapping the type of material referred to in the rule. It is, therefore, found that under Rule 55 it is permissible for helpers to use the cutting torch for the work of scrapping the materials referred to in the rule. Any use of the cutting torch for purposes other than scrapping materials at the Ashtabula Scrap and Reclamation Plant should be by mechanics under the provisions of Rule 33.

AWARD

Claim denied insofar as the work performed consists of the scrapping of materials.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1942.