

Award No. 1007

Docket No. 932

2-CB&Q-BM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** Claim in behalf of Ray Burkholder, boilermaker, employed at Denver Shops, for payment of \$1.00 per hour under the provisions of Rule 49 (a) for service performed on January 22, 23, 25, 26, 27, 28, 29 and 30, 1943.

**JOINT STATEMENT OF FACTS:** On the dates named in the claim, Ray Burkholder, the claimant, acting under instructions of proper officers of the carrier, was used to fit up sheets on new tanks which were being constructed by the Chicago, Burlington and Quincy Railroad Company for the Mexican Government. There is an assigned boilermaker at Denver, who is compensated under the provisions of Rule 49 (a). This employe laid out the sheets and templates from blueprints, after which the claimant fitted up the sheets, inserted bolts to hold in place, reamed out the prepunched rivet holes for smoothness and alignment, after which the sheets were riveted in place by another boilermaker.

**POSITION OF EMPLOYEES:** There is an agreement in effect between the parties to this dispute. The effective date of that agreement is October 1, 1940.

Further, that Boilermaker Ray Burkholder was assigned to do the fitting up on the following engines by direction of the foreman in charge on the following dates.

1-22-43	8-hours	Engine 1562	E. W. W. No. 53
1-23-43	8-hours	Engine 1559	E. W. W. No. 53
1-25-43	8-hours	Engine 1559	E. W. W. No. 53
1-26-43	8-hours	Engine 1562	E. W. W. No. 53
1-27-43	8-hours	Engine 1562	E. W. W. No. 53
1-28-43	8-hours	Engine 1559	E. W. W. No. 53
1-29-43	8-hours	Engine 1559	E. W. W. No. 53
1-30-43	8-hours	Engine 1559	E. W. W. No. 53

I wish to point out to your Honorable Board that there is one man assigned to do the work outlined in Rule 49 (a), but that very frequently it is necessary to intermittently assign another man, but not sufficient to justify

as may develop which is not performed by boilermakers who are assigned under Rule 49 (a), such as that performed by the claimant on the eight days named in the claim, is correctly compensated for under the provisions of Rule 48 (a), which reads as follows:

“A boilermaker in this classification is an employe assigned to **laying out**, cutting apart, building or repairing boilers, tanks, car tanks and drums; inspecting, patching, riveting, chipping, caulking, **flanging**, flue welding, and applying of flues; building, **laying out and fitting up** any sheet iron or sheet steel work made of sixteen (16) gauge or heavier, including the building and repairing of steel cabs and running boards, ash pans, steel tender frames, and building new metal pilots, front end nettings and diaphragms; removing and applying all stay bolts, radials, crown bolts, sleeves, stay rods, and braces in boilers, tanks and drums; applying flexible staybolt caps; drilling and tapping for washout plugs or bushings and applying bushings; removing and applying arch tubes; operating air rams and hammers, bull, jam and yoke riveters; boilermaker's work in connection with building and repairing steam shovels, derricks, booms, housings, circles, coal bug-gies, I-beams, channel irons and T-iron work; all drilling, cutting and tapping; operating power driven rolls in connection with boilermaker's work; oxy-acetylene, thermit and electric welding on work generally recognized as boilermaker's work; operating cutting torch for burning out staybolts and crown stays; operators of portable oxygraph shape cutting machine, and all other work generally recognized as boiler-maker's work . . . 85¢ (now 95¢) per hour.”

The distinction between Rule 48 (a) and Rule 49 (a) which the employes inadvertently—but in perfect honesty—have overlooked, is that Rule 48 (a) provides a rate for a variety of duties, including flanging, laying out and fitting up, whereas, Rule 49 (a) provides a rate for employes who are assigned primarily to these three functions, and it is admitted that the claimant was not so assigned.

In conclusion, the carrier asserts that:

(1) The claimant was assigned to and did perform the service covered in Rule 48 (a).

(2) Therefore, he was properly compensated under the provisions of Rule 48 (a).

(3) Not being assigned under Rule 49 (a), the claimant is not entitled to the rate therein stipulated.

(4) Although employes at both Denver and West Burlington have been compensated in exact conformity with the carrier's contentions, both prior and subsequent to October 1, 1940, the effective date of current schedule agreement, this is the only dispute that has arisen in connection with such payments.

**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.

Rule 49 (a) of the controlling agreement provides that flangers, Layers out, and fitters up will be assigned at West Burlington and Denver New Shops; and it establishes a 5-cent-per-hour differential for work performed by those so assigned.

The claimant, under instructions of the carrier, was used as a fitter up at Denver New Shops on the dates specified in the claim, but he was not "assigned" to that work at this point, within the meaning of the rule. Hence the claimant is not entitled to the differential under Rule 49 (a) of the agreement.

Rule 13, however, provides a method of payment for "an employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned," and the provisions of this rule govern the circumstances of this proceeding. If temporarily assigned for four hours or more in one day, he must be paid the higher rate for the entire day; if temporarily assigned for less than four hours in one day, he must be paid the higher rate on the minute basis, with a minimum of one hour. Hence the claimant, who seeks proper payment "for service performed" on the specified dates, is entitled to the differential under Rule 13 of the agreement.

#### AWARD

Claim sustained on basis and to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1944.