

Award No. 1086

Docket No. 1003

2-D&RGW-MA-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: A. That the carrier violated the controlling provisions of the agreement dated September 1, 1940, particularly Rules 46, 28, 27 and 8 thereof, in assigning Carmen Jack Fink, Floyd Kendall and C. R. McElvain to making repairs to Diesel-electric locomotive M541, at Funston on May 28, 1943.

B. That in consideration of the aforesaid, the carrier be ordered to additionally compensate Machinists J. R. Miller and Bailey Arant, each at the pro rata rate for 12 hours and 8½ minutes, as follows:

1. From 6:55 A. M. to 7:30 A. M., May 28, 1943, traveling time, plus 1 hour preparatory time, or 1 hour and 35 minutes.
2. From 3:30 P. M. to 7:35 P. M., at the rate of time and one-half or 6 hours, 7½ minutes, from 7:35 P. M., May 28, 1943, to 12:01 A. M., May 29, 1943, waiting and traveling time, or 4 hours, 26 minutes, a total of 10 hours and 33½ minutes.

EMPLOYEES' STATEMENT OF FACTS: The Grand Junction, Colorado, wrecker, together with the regularly assigned crew, were dispatched to Grizzly on the main line of the Denver & Rio Grande Western Railroad to rerail Diesel-electric locomotive M541 on May 25, 1943. Carmen Journeymen Jack Fink, Floyd Kendall, C. R. McElvain accompanied the outfit to Grizzly as additional members to the regularly assigned crew.

After having rerailed Diesel-electric locomotive M541, this, together with the wrecker and the entire crew members, was transferred to Funston where this equipment remained idle during the night of May 27, 1943.

On the morning of May 28, 1943, the wrecker and the entire crew, including Carmen Journeymen Jack Fink, Floyd Kendall and C. R. McElvain were again transferred to Grizzly to load a damaged box car and caboose on flat cars. Shortly after arriving at Grizzly, Carmen Jack Fink, Floyd Kendall and C. R. McElvain were advised to return to Funston to perform certain repair work

the work which the organization states should have been performed by machinists.

2. Rule 41 is controlling, and the organization does not contend that this rule was violated.
3. The inaction of the organization since September 1, 1934, with respect to the carrier's application of Rule 41.

The carrier affirms that all data submitted in support of its position have been submitted to the organization and made a part of the particular question in dispute. The right to answer any data not previously presented by the organization is reserved by the carrier.

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 claim here is limited to the work performed at Funston on the Diesel locomotive on May 28, 1943. From the record before us the work was repair work and was not performed under the working foreman, but rather under the direction of the assistant chief mechanical officer.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.