

Award No. 1210

Docket No. 1137

2-Erie-FO-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100. RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FIREMEN & OILERS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Fire Builder Louis Smith is entitled to be paid from 3 P. M. to 11 P. M., 8 hours, at the time and one-half rate on August 10, 1946, because of having improperly used, under the firemen and oilers' current collective bargaining agreement, other than firemen and oilers during this entire 8 hour shift to build fires in locomotives.

EMPLOYEES' STATEMENT OF FACTS: Louis Smith, hereinafter referred to as the claimant, was regularly employed by the carrier in the roundhouse at Hornell, New York, as a fire builder, to build fires in engines on the 3 P. M. to 11 P. M. shift.

August 10, 1946, was the claimant's assigned day off, and in lieu of retaining his service or calling him out to build fires on his regular shift that day, from 3 P. M. to 11 P. M., the carrier elected to assign Sheet Metal Worker Helper Abraham D. Garippa to build fires in locomotives during the claimant's entire shift on said date. This is substantiated by copy of the submitted letter dated October 31, 1946, addressed to Mr. Carlson, identified as Exhibit A; copy of Mr. Carlson's letter of November 4, 1946, submitted and identified as Exhibit A-1, and copy of the submitted statement of Sheet Metal Worker Helper Garippa, identified as Exhibit B.

The agreement dated effective January 1, 1944 is controlling.

POSITION OF EMPLOYEES: It is submitted that Rule 1 (a) of the afore-said controlling agreement specifically includes "fire builders," not only on certain days of the week but seven days a week—twenty four hours a day—three hundred and sixty five days per year, and that this claimant was a fire builder regularly employed as such. In addition to this fact, the claimant was entitled to be retained or to be called by 'phone, as on previous occasions, to work his regular shift on August 10, and if he had been called, fifteen minutes from that time he would have been on the job in the roundhouse building fires in locomotives available to be fired up.

It is obvious that Sheet Metal Worker Helper Garippa was assigned inconsistent with the firemen and oilers' agreement to perform the work in

"23 (c). Cases must be filed with the Foreman in charge, preferably in writing, within 30 days after the date of occurrence or the situation is known to exist. Date for conference will then be set within 10 days and such date to be within 30 days after notice is received or if no conferences required decision in writing will then be made within 30 days. If case is not satisfactorily disposed of, appeal to the next highest officer may then be made within 30 days. If case is not satisfactorily disposed of, appeal to the next highest officer may then be made provided appeal is made in writing within 15 days after date of last previous decision. Each subsequent appeal to the next highest officer must be in accord with procedure outlined above."

In this case, the claimant, Louis Smith, was regularly assigned as fire builder 3:00 P. M. to 11:00 P. M. with relief day on a Saturday.

On Saturday, August 10, Smith was replaced at 3:00 P. M. with the regular Relief Fire Builder, E. Jackson.

After the starting time at 3:00 P. M., when the Foremen Recktenwald and Kiely found that five of the labor force at the Hornell roundhouse had failed to report for work and had failed to notify the foreman in advance or to give any notification at all that they were going to be absent as required by Rule 17 (c), and recognizing the fact that the engines must be kept moving, and an emergency existed, the foremen resorted to what any reasonable person would do in accordance with the provisions of 1 (b) of the agreement, he assigned other men to do the firebuilding as incidental to their regular duties. The time cards of these men evidence that the firebuilding was merely incidental. Furthermore, the local committeeman for the firemen and oilers personally asked Wanderworker to give a hand and to assist in building fires on August 10, because of the conditions created by the failure of so many men failing to report. The foreman also made use of any others available to assist because it is customary and permissible to do so. Rule 1 (b) of the agreement, January 1, 1944, was designed to avoid claims of this type and to meet emergencies.

When an employe is assigned his off day to rest, the roundhouse foreman naturally expects that the individual is not to be disturbed.

The foreman's record shows that on six previous occasions when emergencies existed, efforts were made to have Smith report for work, but only on two of the six occasions was any success had in getting Smith to report for the emergency work.

There is no merit to this claim and it should be denied by the Second Division because:

1. Smith has not demonstrated a right under any rule of the agreement, January 1, 1944, to be called on his off day August 10, 1946, or to be paid when he is not called at penalty rate.
2. Regular assigned Relief Fire Builder Jackson was working in the place of Smith when he was off duty on his relief day August 10, 1946.
3. The assignment of men other than those covered in this agreement to this work, which was performed as an incident to their regular duties was in strict compliance with rule 1 (b) of the agreement.
4. The daily time cards of the three boilermaker helpers evidence the fact that the firebuilding was merely incidental to their regular duties.

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 evidence in this case is not conclusive as to sustain the claim. Mr. Smith had previously not accepted work on his relief day off.

On the day in question the carrier found it was, without advance notice, short five men for the 3 P. M. shift. Three helpers were available. Among them was Sheet Metal Worker Helper Garippa.

Any unusual assignments, if made, were only to cover an unforeseen situation. There is no evidence of intent to cross craft lines to defeat the purpose of classification of work rules.

Carrier says Relief Fire Builder Jackson was on duty and did build fires.

The employes say Helper Garippa was assigned to build locomotive fires during his shift, 3 to 11 P. M.

The carrier says Garippa spent his entire tour of duty repairing tanks on August 10th.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.