

Award No. 1356

Docket No. 1238

2-UP-EW-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the terms of the controlling agreement the carrier unjustly furloughed Electricians J. H. Ray on February 6th and S. C. Henderson on February 7, 1948, by virtue of having assigned their duties consisting of electricians' work to employes other than electrical workers.

2. That accordingly the carrier be ordered to restore these employes to their respective electrician assignments and compensate them for all time lost retroactive to the aforesaid dates.

EMPLOYEES' STATEMENT OF FACTS: O. R. Warner, S. C. Henderson and J. H. Ray were employed by the carrier as power house electricians at Kelso, California, on the 1st, 2nd and 3rd shifts, respectively, with seniority dates as follows: O. R. Warner 5-23-1924, S. C. Henderson 8-15-1926 and J. H. Ray 10-10-1944. Their duties consisted of operating a high tension electric power house which supplies power and lights for the entire town, including about 35 houses, pumps, depot, club house, yards, etc., which are owned by the carrier, and several privately owned houses.

Until recently, the electrical power was generated by a 375 K.V.A., 2400 volt, three phase Westinghouse generator driven by a Winton gas engine. At present, power is being generated by a 312 K.V.A., 2400 volt, three phase Westinghouse generator driven by a Chicago Pneumatic Diesel engine, the other generator being available for standby service. In addition to the above, the power plant consists of the usual switchboard, switches, (all 2400 volts) meters, rheostats, etc.

On February 6 and 7, 1948, Electricians J. H. Ray and S. C. Henderson, hereinafter referred to as the claimants, were furloughed and Electrician O. R. Warner was assigned to operate the power plant during the second shift. Foreman Massman was given the same assignment during the first shift and a machinist assigned to the third shift. The only other duties of these assignments, in addition to the continuous operation of this electric power plant, would consist of incidental light emergency repairs to one Diesel-electric road engine.

The agreement effective November 1, 1934, as superseded by agreement effective May 1, 1948, is controlling.

- 1' 40" 7:00 PM to 8:40 PM—No work to do.
 2' 20" 8:40 PM to 11:00 PM—Inspect and clean Diesel helper unit.

Machinist—11:00 PM to 7:00 AM

- 10" 11:00 PM to 11:10 PM—Make roll by inspection of train 104.
 20" 11:10 PM to 11:30 PM—Observe operation of Diesel engine generator in power plant, check engine water supply and fill force feed lubricator and oil cups.
 10" 11:30 PM to 11:40 PM—Walking to depot.
 10" 11:40 PM to 11:50 PM—Fill oil cans at depot.
 55" 11:50 PM to 12:45 AM—No work to do.
 2' 45" 12:45 AM to 3:30 AM—Inspect and service Diesel helper unit and make out work reports.
 20" 3:30 AM to 3:50 AM—Lunch period.
 20" 3:50 AM to 4:10 AM—Observe operation of Diesel engine generator in power plant.
 1' 13" 4:10 AM to 5:23 AM—No work to do.
 05" 5:23 AM to 5:28 AM—Make roll by inspection of train 103.
 32" 5:28 AM to 6:00 AM—No work to do.
 05" 6:00 AM to 6:05 AM—Make roll by inspection of train 1.
 25" 6:05 AM to 6:25 AM—No work to do.
 35" 6:25 AM to 7:00 AM—Walk to powerhouse and observe operation of Diesel engine generator.

It will be noted that total time spent by any employe in the power plant during a 24-hour period aggregated 45" on the first shift, 35" on the second shift and 1' 15" on the third shift. It will also be noted that there is insufficient mechanical work of any nature remaining at Kelso to keep one man on a shift fully engaged.

The elimination of power plant operations at Kelso would have justified abolishing the remaining position of electrician on the 3 P.M. to 11 P.M. shift as well as the electricians (power plant operators) assigned to the other two shifts. However, as a matter of equity to the crafts involved and in the interest of the most suitable assignments, a position of electrician was retained on the 3 P.M. to 11 P.M. shift and a position of machinist on the 11 P.M. to 7 A.M. shift to handle miscellaneous work that may arise at this outlying point.

The carrier has repeatedly attempted to reach an understanding with System Federation No. 105 concerning the classification of positions to be assigned at these outlying points where the work has so greatly diminished, or disappeared to the point where the work situation does not require the carrier to keep mechanics of each craft on each shift. (See carrier's Exhibits E, F, G, H and L.) Efforts to reach an understanding with System Federation No. 105 have been unavailing and, in the absence of such understanding, the carrier has established assignments in the most equitable manner possible. Certainly, the carrier cannot be required to provide two assignments on a shift, when there is insufficient work available to keep one man fully engaged.

The claim 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 were given due notice of hearing thereon.

Rule 122 of the parties' effective agreement, insofar as here applicable, provides:

"Electricians' work shall include . . . high tension power house and substation operators, . . . and all other work properly recognized as electricians' work."

On February 19, 1944, carrier converted its power plant at Kelso, California, from a low to a high tension plant. It thereupon correctly advised the general chairman, as of February 24, 1944, as follows:

"In view of present plant at Kelso being changed to a high tension plant, operators of that plant will necessarily be qualified and rated as electricians in accordance with Rule 122 of the current shop crafts' agreement."

Since then the form of the power used to operate the plant has been changed from steam boilers to a Diesel engine, the use of stationary steam boilers being discontinued as of March 26, 1948. However, carrier has continued to operate it as a high tension power plant.

Work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms nor, when discontinuing a position within the scope of an agreement, may a carrier assign the work to others outside the scope thereof. The reason for this rule is that the employes within the agreement have the right to perform it as long as it exists and to deprive them of that right is to defeat the purposes of the agreement which secures it to them.

Due to change by carrier in the form of the power used by it in this plant, and elsewhere on its property, there was a sharp reduction in the number of employes needed at Kelso. In fact, carrier did not have enough work to justify employing a mechanic of each craft on each shift.

Ordinarily the carrier will not be required to employ a greater force than is reasonably necessary to efficiently handle its business. The determination of such matters is the prerogative of management and rests primarily with it except to the extent it has limited itself by contract.

Under this situation carrier sought to apply the following from Rule 32 of the parties' effective agreement:

"At outlying points (to be agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic, or mechanics, employed at such points will, so far as capable, perform the work of any craft that may be necessary."

From reading the foregoing rule it is apparent that it does not designate a basis for craft classification of mechanics to be assigned at outlying points to perform composite work. Carrier sought to reach an understanding with respect to such basis with the System Federation.

However, the foregoing quoted part of Rule 32 is only applicable to "outlying points" when agreed upon to be such by the parties. It may be, as carrier states, that because of the extent to which forces have been reduced at Kelso that it has become such an outlying point as contemplated by the rule. However, the record does not affirmatively show that Kelso was agreed upon to be such at the time this applicable agreement became effective on November 1, 1934, nor that the parties have at any time since then agreed to such a status. Neither does the record affirmatively show that carrier sought an agreement to so classify it. In the absence of such agreed to classification, or a bona fide

attempt to do so, the provisions of Rule 32 are not applicable to the forces working at Kelso.

AWARD

Claim sustained except that compensation for time lost shall be limited as follows: J. H. Ray for all time lost between February 14, 1948, and June 29, 1948. S. C. Henderson for all time lost between February 15, 1948, and June 12, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1950.