

Award No. 1387

Docket No. 1308

2-L&N-FO-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Firemen and Oilers)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That the current agreement was violated when the carrier assigned an extra Class "B" Laborer to fire the stationary boiler at the passenger station from 11:00 P.M. to 7:00 A.M. on May 25, 26, 27 and 28, 1949.

2—That accordingly the carrier be ordered to additionally compensate Stationary Fireman Ed. Ellison in the amount of eight (8) hours at the time and one-half rate on each of the aforesaid dates.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a power plant at the passenger station, Corbin, Kentucky, which is operated around the clock, with a stationary fireman assigned on each shift during the winter months, but as the weather moderates in the spring the operations are accordingly reduced to the status of only operating the third shift, and finally the position of the stationary fireman on that shift was abolished.

The unseasonable weather conditions, however, necessitated the carrier operating this power plant on the third shift, from 11:00 P.M. to 7:00 A.M., from May 25 to 28, 1949, inclusive, and in lieu of using a stationary fireman, the carrier assigned an extra Class B laborer to fire the stationary boiler in order to supply the passenger station with heat.

Stationary Fireman Ed. Ellison, hereinafter referred to as the claimant, who last fired the stationary boiler on the third shift until it was abolished when he was thereafter employed as stationary fireman on the 7:00 A.M. to 3:00 P.M. shift in the roundhouse, was available to fire the stationary boiler on the third shift at the passenger station on the aforementioned dates.

The stationary fireman at the passenger station and the stationary fireman at the roundhouse are carried on the same seniority roster.

The agreement, effective June 1, 1942, as amended November 1, 1946, is controlling.

POSITION OF EMPLOYEES: It is submitted that there is nothing in Rule 1, Scope A, or elsewhere in the current agreement which authorizes the carrier to use an extra Class B laborer as stationary fireman on the dates

"Temporary vacancies or positions will be filled, if necessary, by senior qualified extra men for a period not to exceed thirty days. After such period the vacancy will be advertised as a temporary vacancy and assigned to the senior qualified bidder."

Inclement weather created the need for a stationary fireman at the passenger station on May 25, 26, 27, and 28, 1949, thus creating a temporary vacancy within the meaning of Rule 18(a). Mr. Ellison, having a regular assignment as stationary fireman, had no agreement rights to this vacancy, and accordingly Isaac Monhollen, a qualified extra man working in a lower classification, was assigned to it.

In further support of our position we call the Board's attention to the provisions of Rule 11 of the effective agreement, from which we quote:

"New positions or vacancies that are expected to last more than thirty days will be bulletined within two days prior to or after the date of creating new positions or vacancies. . . . Men on second and third (night) shifts will be given preference on day jobs, if qualified and senior. . . ."

Knowing that the position would last but a short time, there was no need to bulletin it, consequently it was considered as a temporary vacancy, bringing it within the provisions of Rule 18(a).

Rule 13(c) of the agreement provides:

"A general notice will be posted four days in advance of effective time of abolishment of regular assigned positions. Copy of notice to be given the Local Chairman. This will not apply in case of an Act of Providence."

It was not necessary that the position of stationary fireman be abolished by bulletin notice for the reason that it was not a regularly assigned position.

Rule 10(e) provides:

"Employees in Group 'B' will not establish seniority in Group 'A' while protecting temporary vacancies in the latter group; except when assigned to temporary vacancy lasting 100 consecutive working days, provided such vacancy was advertised in accordance with Rule 18(a). When assigned by bulletin to regular vacancy in Group 'A' seniority in that group will date from the date of such assignment."

The foregoing further establishes the fact that the carrier acted within its rights in using Mr. Monhollen on the position in question, in view of which protest of the employees 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.

As weather moderated, the first, second and third seasonal shifts of stationary fireman at the passenger station were respectively cut off one at a time. Claimant as first shift man with seniority in Class A displaced the other occupants in turn. When the third shift was cut off, he displaced the

first shift man at the roundhouse, where stationary firemen are carried on the same seniority roster as at the passenger station. Thereafter inclement weather made it necessary to temporarily place a stationary fireman back on third shift at the passenger station. In that situation, a Class B Laborer, who had no seniority in Class A as a stationary fireman, was assigned to and performed the work May 25, 1949, to May 28, 1949, inclusive.

The Division concludes that the assignment was a temporary position within the purview of Rule 18 (a), but it was not filled by a senior qualified extra man in Class B having seniority as a stationary fireman in Class A, and it was not necessary to fill it with a Class B laborer having no such seniority because claimant was available and should have been called. Not having performed the work, however, he is entitled to be paid only the pro rata rate of the position for four days' work.

AWARD

Claim sustained on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1950.

DISSENT TO AWARD NO. 1387, DOCKET NO. 1308

DISSENT OF THE UNDERSIGNED CARRIER MEMBERS:

The findings in this award state that:

"* * * but it was not filled by a senior qualified extra man in Class B having seniority as a stationary fireman in Class A, and it was not necessary to fill it with a Class B laborer having no such seniority because claimant was available and should have been called * * *."

The claimant is a regularly assigned first shift stationary fireman and under these findings this carrier is required to work this regularly assigned first shift stationary fireman an additional eight hours on a temporary position of third shift stationary fireman under penalty payment because no extra men with Class A seniority were available; this is not supported by the rules of the controlling agreement.

Rule 18 (a) provides that:

"Temporary vacancies or positions will be filled, if necessary, by senior qualified extra men for a period not to exceed thirty days. After such period the vacancy will be advertised as a temporary vacancy and assigned to the senior qualified bidder."

Rule 31 (a) provides that:

"Extra men will be used for extra work in accordance with dating as shown in Rule 10 when qualified and on hand and ready for duty. The extra list will be supplemented by the addition of new employees when needed."

and under "NOTE":

"Group B employes may be used to fill the vacancy of a Group A employe. For example a stationary fireman lays off and there is no employe with seniority as a stationary fireman available in a lower classification, a senior qualified laborer regularly assigned in Group B may be used to fill the vacancy, * * *".

This carrier fully complied with these rules as there were no cut-off stationary firemen available with seniority as such and they used a senior regularly assigned qualified Group B laborer.

If there had been no qualified Group B employes available, there is nothing in the agreement that would prohibit the carrier from employing a new man to fill this temporary position.

The referee in his findings and award has imposed an obligation upon the carrier to work the claimant an additional eight hours at the punitive rate of pay which is not supported by the rules of the controlling agreement.

The majority also ignored the findings as set forth in Second Division Awards Nos. 1114, 1117 and 1257.

/s/ C. S. Cannon

/s/ J. A. Anderson

/s/ M. W. Hassett

/s/ M. E. Somerlott

/s/ A. G. Walther