

Award No. 1468

Docket No. 1377

2-IC-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier is violating the current agreement and Rule 34 thereof, by the payment of only the minimum Carmen's rate to mechanics who operate the oxy-acetylene tool for heating purposes in connection with repairs to cars.

2. That in consideration of the aforesaid violation, the Carrier be ordered to pay each mechanic the 6¢ differential rate for such service performed.

EMPLOYES' STATEMENT OF FACTS: At the Johnston car shop, Memphis, Tennessee, carmen are assigned to operate the oxy-acetylene tool for heating parts of cars to be straightened and in some instances, welded. These carmen who are required to use the oxy-acetylene tools for heating purposes are denied the differential rate.

This dispute has been appealed in accordance with the agreement effective April 1, 1935, and subsequently amended, to the highest carrier officer designated to handle such matters, with the result that this officer has declined to make any satisfactory adjustment.

POSITION OF EMPLOYES: Rule 34 of the current agreement reads in pertinent part:

"In compliance with the special rules included in this agreement, none but mechanics and their apprentices in their respective crafts, shall operate oxyacetylene, thermit or electric welders; where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of the cutting torch when engaged in wrecking service or cutting up scrap.

When performing the above work for four (4) hours or less in any one day, employes will be paid the welders' rate of pay on the hourly basis with a minimum of one (1) hour; for more than

This claim is, therefore, one to change the meaning and application of the agreement by interpretation rather than by negotiation as required by the Railway Labor Act, and this Board has no authority to change the agreement.

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.

At the Johnston Car Shop at Memphis, Tennessee, carmen are assigned to operate the oxyacetylene tool for heating metal parts of cars to be straightened. The organization contends that carmen who are required to use oxyacetylene tools for heating purposes are entitled to receive the 6¢ differential above the minimum carmen's rate. It is the position of the carrier that the differential in pay accrues only to the benefit of carmen engaged in welding, cutting and preheating for welding. The primary rule involved is Rule 34, current agreement, which provides in part:

"In compliance with the special rules included in this agreement, none but mechanics and their apprentices in their respective crafts, shall operate oxyacetylene, thermit or electric welders; where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of the cutting torch when engaged in wrecking service or cutting up scrap."

The effect of the foregoing rule is to reserve the use of the oxyacetylene torch to each craft in the doing of work performed by it at the time the oxyacetylene torch was introduced into the railroad industry, except when engaged in wrecking service and cutting up scrap. It is not, therefore, a tool to which any one craft or group can properly claim the exclusive use.

The oxyacetylene torch is used in the performance of work which was formerly done with the kerosene blow torch and hand forge. While it may not have displaced them entirely, it is to a large degree the successor tool to the kerosene blow torch and the hand forge. The record shows that carmen were never paid the differential formerly for the operation of these tools when used for heating purposes only. We think the record shows that the differential was originally established on this property only for welding on the theory that welding required skill, training, and experience while heating only for the purpose of straightening or bending does not require those qualities of workmanship. We do not think the rules require the payment of the differential for the use of the oxyacetylene torch for heating of metal as an aid to the manual effort required to straighten or bend it. The historical background of the differential supports this view. The practice followed in past years appears to be in conformity with this holding. We are obliged to say therefore, that the use of the oxyacetylene torch for heating to aid in straightening or bending is not work within the purview of Rule 145, current agreement, requiring the payment of a differential of 6¢ per hour. We think this differential applies, after considering the language of the agreement and the practices existing on this carrier, to those operating the oxyacetylene or electric welding torch in welding, in cutting in connection with the making of repairs, and in heating preparatory to welding. Any extension of the scope of the application of the differential

must come from negotiation and not by an interpretation which could only have the effect of revising the agreement, a function this Board does not possess.

We have not overlooked the letter of Frank McManamy, Assistant Director General of Railroads, United States Railroad Administration, bearing date of February 13, 1920. We point out that this interpretation was clearly abrogated by Section 5 of Addendum No. 6 to Decision No. 222 of the United States Railroad Labor Board. We point out also that the interpretation as made deals generally with the subject of "heating" and makes no distinction between heating preparatory to welding and heating for purposes of bending or straightening. The language of Rule 145, current agreement, authorizing the differential for carmen states that "autogenous welders" shall receive the differential, indicating that it was to apply to skilled welders and not to those using it to aid in straightening or bending. The uncontradicted assertions of the carrier that the differential has been applied in accordance with its claimed interpretation for more than two decades without an objection being made or a claim being filed until the present dispute arose, leaves little doubt that the carrier has been applying the differential rule for carmen in conformity with both the intent and understanding of the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July, 1951.