

Award No. 1923

Docket No. 1772

2-CMSt.P&P-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Electricians were improperly denied the six (6) cent differential above the minimum rate paid Electricians when assigned to inspection of locomotives.

2. That accordingly Electricians who performed this work, to be named later, are entitled to be compensated additionally in the amount of six (6) cents for all time so assigned retroactive to October 1, 1952.

EMPLOYES' STATEMENT OF FACTS: The carrier (Chicago, Milwaukee, St. Paul and Pacific Railroad Company) employs electricians whose duties, among other things, are to inspect the electrical equipment of automatic cab signal systems on locomotives and to make out and sign Form 2889 (Revised), a copy of which is submitted herewith and identified as Exhibit A. The carrier has refused to pay this differential when such inspection is made or required by Form 2889 during the time and since the case has been handled on the property.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the terms of Rule 80, which reads as following:

"Electricians, when generally assigned to inspection of locomotives for the purpose of meeting the requirements of the Federal Inspection Law and/or operators of autogenous welding apparatus will receive six (6) cents above the minimum rate paid electricians at point employed. If not generally employed at such work, they will receive the differential for the time so engaged."

Electricians when assigned to inspect locomotives for the purpose of meeting the requirements of the Federal Inspection Law are entitled to

Commission forms are not only filled in and signed but they are also notarized. Copies of each of those three Interstate Commerce Commission forms are forwarded to the Interstate Commerce Commission in accordance with requirements. However, mechanics also inspect locomotives, fill in and sign CMSTP&P Forms 657 and 2887 as well as CMSTP&P Form 2889, but they are not forms prescribed by the Interstate Commerce Commission, copies of such forms are not furnished to the Interstate Commerce Commission, those forms are not notarized and although they have been in existence for years, no differential rate has ever applied to the mechanics who perform the work of inspecting locomotives necessary to the filling out and signing of those forms.

For instance, for years machinists have inspected locomotives sufficient to permit them to properly fill out and sign CMSTP&P Form 657 attesting to the condition of air brake equipment of locomotives yet a differential rate has never been applied to employes performing such inspection. This form, like CMSTP&P Form 2889, is not furnished to the Interstate Commerce Commission but a copy of same is secured under glass in each locomotive cab.

CMSTP&P Form 2889 is nothing more than a record of the condition of and repairs made to the various appurtenances which are a part of or relate to the automatic cab signal system on locomotives. A comparison of that form with Interstate Commerce Commission Form 638, 639 and 3028 will readily disclose that the inspection and testing of those parts of the locomotive sufficient to fill out CMSTP&P Form 2889 would not be at all comparable with the inspection and testing required in connection with the filling out of the three Interstate Commerce Commission forms mentioned. However, the important fact is that an electrician performing that work necessary to fill out and sign CMSTP&P Form 2889 is not "assigned to inspection of locomotives for the purpose of meeting the requirements of the Federal Inspection Law".

The claim presented in this case is a request for the application of a differential rate to electricians which has not heretofore applied although the work forming the basis of the present request has been performed by electricians since April 1926. The differential rate requested is not within the application of Schedule Rule 80 and heretofore has not been so construed by the parties. We submit that this request involves an extended application of the provisions of a schedule rule beyond its intended and accepted meaning and is therefore not properly before your Honorable Board. We respectfully request that the claim 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 the dispute were given due notice of hearing thereon.

Under Rule 80 employes claim that electricians are entitled to a six-cent differential when assigned to inspection of electrical equipment of locomotives for report on carrier's form 2889.

In 1922 carrier was ordered by the Interstate Commerce Commission to make certain automatic train-stop installations. In its operation of this equipment carrier required of its employes both an after-trip and a monthly test and report on the electrical equipment. At first there were two forms of

the latter,—one inaugurated on January 7, 1926 and the other on April 7, 1926. These were later combined into the present form 2889. Certain other inspections and reports were required by the Interstate Commerce Commission on forms sent by them.

Rule 125 of the schedule agreement of December 15, 1926 provided for a five-cent differential, above the minimum rate, to electricians "assigned to inspection of locomotives for the purpose of meeting the requirements of the Federal Inspection Law". Except for change from a five-cent to a six-cent differential, Rule 125 was the same as Rule 80 which became effective September 1, 1949 and has since been in effect.

Under that rule, electricians assigned to the inspection required for the report forms originally prescribed by the Commission have been paid the differential, but it has not been paid for inspection and report required by carrier's form 2889.

In 1937, by amendment, the Interstate Commerce Act required that each carrier file with the Commission its rules and instructions for inspection of such equipment, and provided that after approval they should become obligatory upon the carrier.

In 1939 and again in 1950 rules were adopted by the Interstate Commerce Commission requiring that the record of results of carrier's tests such as that on form 2889 should be filed in carrier's proper office.

While the inspection and report on form 2889 are the same as required by carrier for many years, without payment of, or claim for the differential, it is contended that as a result of the requirement under the Interstate Commerce Act for the continuance and filing of such reports, the inspection of locomotives therefor is now being made for the purpose of meeting such requirements of the Federal Inspection Law, wherefore the differential rule applies.

The inspections and tests required for making form 2889 were specified by carrier; the form was devised by carrier; the report was signed as it required, and filed only in its office. When it was inaugurated there was no requirement of such inspection or report in any Federal Inspection Law, and the purpose of the inspection of locomotives in preparing form 2889 could have been only the independent purpose of the carrier. Therefore Rule 80 did not apply.

On the contrary, the inspections and reports initially required by the Interstate Commerce Commission were made on forms prepared and sent out by the Commission; they were sworn to as ordered by the Commission, and filed with the Commission, and such inspections were made patently for the purpose of meeting the requirements of the Inspection Law. Rule 80 did apply, and electricians assigned to such inspections have been paid the differential.

"Purpose" has been defined as "the object or result aimed at." The fact that carrier was subsequently required by law to continue the inspection and report on form 2889 which it had formerly adopted and required for its own purpose did not of itself change the purpose or object or result aimed at by such inspection and report. There is no evidence that the original purpose of the form did not continue, so it must be presumed that it did continue and that electricians still are assigned to inspection and report on form 2889 for the same purpose which originally prompted the requirement, and not merely to obey the law.

Long practice on the property supports that construction of the rule, and to hold otherwise would result in causing the wage scale to depend on

the rules of the Interstate Commerce Commission rather than on service rendered.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1955.