

Award No. 2063

Docket No. 1905

2-NP-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Firemen and Oiler Craftsmen were improperly used on and after February 1, 1954 to supply locomotives with coal from coal dock at Logan, Montana.

2. That accordingly the Carrier be ordered to compensate Leading Coal Dock Laborer I. L. Blazier in the amount of four hours pay at the applicable rate for each time that other than Firemen and Oiler Craftsmen were used to perform this service, retroactive to February 1, 1954.

EMPLOYEES' STATEMENT OF FACTS: Logan, Montana, is the home terminal for a local freight and local passenger run. On March 1, 1944, the carrier took over the operation of the Logan coal dock, which had been operated under contract by the Addison Miller Company for several years prior to that time. From March 1, 1944 until September 1, 1952 continuous service was maintained on the Logan coal dock and all locomotives taking coal there were supplied by coal dock laborers or engine watchmen. One position of roundhouse foreman, seven days a week, and five craftsmen of the firemen and oilers were employed on full time assignments in August 1952. Subsequent to September 1, 1952, because of reduction in number of employees at Logan there were times when no craftsmen of the firemen and oilers was on duty. Carrier ordered roundhouse foreman, effective September 1, 1952, to supply locomotives with coal when no firemen and oiler craftsmen were on duty. The carrier later agreed that this was wrong and paid a considerable number of claims submitted by firemen and oiler craftsmen because of roundhouse foreman supplying coal to locomotives between September 4, 1952 and May 15, 1953. Copy of letter of settlement is submitted herewith and identified as Exhibit A. On January 13, 1954, a notice was posted on bulletin boards at Livingston, Bozeman, Logan, Whitehall, Butte and Helena that there would be no coal dock men on duty at Logan between the hours of 8:00 A. M. and 4:00 P. M. and engine crews would have to take their own coal in case

coupling function in connection with switching and the transfer of cars is not exclusively confined to or performed by any one class or craft of employees. This same finding can well be said to apply to the work of coaling locomotives. Traditionally, by custom and practice, coal dock laborers have not acquired the exclusive right to place coal on tenders of locomotives. This work is performed by coal dock laborers incident to their primary duties and is also performed by locomotive firemen in connection with their principal duties.

Submitted herewith and identified as carrier's Exhibit B are copies of the correspondence exchanged between the carrier and the representatives of the firemen and oilers' organization in connection with the claim covered by this docket. This Division will observe that Superintendent Motive Power J. A. Cannon in declining this claim to General Chairman J. W. Cooper on April 26, 1954 said:

"Coal dock laborers have not acquired exclusive right to coal locomotives. It has been the customary practice on this property for locomotive firemen to coal locomotives at points where coal dock laborers may be employed but not on duty, and also at points where there are no coal dock laborers employed."

Mr. Cooper in appealing this claim to General Mechanical Superintendent G. L. Ernstrom on April 30, 1954 advanced the following unsupported allegation:

"As to coal dock laborers having acquired the exclusive right to coal locomotives it is certainly the contention of the Firemen & Oilers that they do have the exclusive right to coal locomotives with coal from coal docks under their jurisdiction because such work is recognized as coal dock laborers work and coal dock laborers are listed in the scope of their agreement."

Notwithstanding the fact that the burden of proof rested upon the employees to sustain the issue created by the presentation of the claim of I. L. Blazier, the representative of the firemen and oilers' organization did not accept the burden of proof and submit substantive evidence to sustain the allegation that coal dock laborers have acquired the exclusive right to coal locomotives. The representative of the firemen and oilers' organization rested his entire case on the unsupported allegation that coal dock laborers have acquired the exclusive right to place coal on locomotives. This allegation militates against the letter agreement dated January 31, 1944 and is also incompatible with the practice followed on this property of having various classes of employees place coal on tenders of locomotives incident to the predominating duties assigned to such employees. Inasmuch as the employees have submitted no evidence whatsoever to sustain the allegation that coal dock laborers have acquired the exclusive right to place coal on locomotives, it is manifestly plain that the locomotive firemen did not usurp work covered by the firemen and oilers' agreement when placing coal on their locomotives at Logan.

The uncontroverted facts in this docket are that there is no rule contained in the firemen and oilers' agreement allocating the work of placing coal on locomotives to coal dock laborers; that historically no single class of employees has acquired the exclusive right to place coal on locomotives; that by tradition such work is performed by employees of several crafts incident to their primary duties. The claim covered by this docket should therefore 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 employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1954.

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 record reveals that a private contractor operated the coal dock at Logan prior to 1952. The carrier has since operated said coal dock, using its own employees to perform the necessary work.

The effective agreement between the organization and the carrier does not give the exclusive right to place coal on locomotives. As a matter of fact, the work has been given to maintenance of way employees at some points, private contractors at other points and firemen and oilers at still other points. The carrier asserts that it has always been the practice for locomotive firemen to take coal from the coal tipple when there is no coal dock attendant employed or on duty.

The record before us contains a Memorandum of Agreement dated May 22, 1953, with effective date being May 16, 1953. Said agreement was signed by the carrier's chief of personnel and the general chairman of firemen and oilers. This agreement provided that under certain conditions the leading coal dock laborer could be required to perform certain duties attaching to the roundhouse foreman's position in addition to his own at Logan.

Part 3 of the Memorandum of Agreement effective May 16, 1953, stated that "commencing with May 16, 1953, the occupant of the position of roundhouse foreman may coal locomotives between the hours of 7:00 A. M. and 4:00 P. M. on Fridays without laying a foundation for a claim by the leading coal dock laborer or by the engine watchmen."

We believe that the total effect of the Memorandum of Agreement was to distinguish between the duties of the work performed by employees coming under the firemen and oilers' agreement and the duties of the roundhouse foreman. Certainly the Memorandum of Agreement of May 16, 1953, recognized certain rights to certain work as being that of employees of the firemen and oilers' agreement as opposed to the rights of a roundhouse foreman. We believe that the carrier has not contracted away the historic practice of requiring a member of an engine crew to operate the coal tipple under conditions such as existed at the time of this alleged violation at Logan. The carrier has only limited itself as to which craft or class, among the nonoperating groups, is entitled to the work at this particular point.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.