

Award No. 2215
Docket No. 2012
2-MP-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, other than Supplymen were improperly assigned to perform the work of supplying diesel locomotives with flagging equipment, drinking water and fuel oil on November 24, 25, 26, 27, 28, December 1 and 2, 1954 at Poplar Bluff, Mo.

2. That accordingly the Carrier be ordered to additionally compensate Laborer (Supplyman) Clarence Wilson in the amount of three (3) hours' pay at the straight time rate for each of the aforementioned dates.

EMPLOYEES' STATEMENT OF FACTS: Clarence Wilson, (hereinafter referred to as the claimant) was and is employed by the Missouri Pacific Railroad Company at Poplar Bluff, Missouri; at the time this claim originated he was assigned to the 8:00 A. M. to 4:00 P. M. shift with Saturdays and Sundays off as rest days.

Firemen and oiler craftsmen are assigned seven days per week, 24 hours per day including holidays, at Poplar Bluff supplying locomotives.

On November 24, 1954, at about 10:15 P. M. Hostler Spencer and Hostler Helper Watkins supplied diesel units 325A and 320A with flagging equipment, drinking water and fuel oil.

On November 25, 1954, at about 6:30 P. M. Hostler Barker and Helper VanDover supplied diesel units 311A, 302B and 313A with flagging equipment, drinking water and fuel oil.

On November 26, 1954, at about 6:15 P. M. diesel units 308A, 303B and 310A were supplied with flagging equipment, drinking water and fuel oil by Hostler Rogers and Helper VanDover.

Section 3, First (j) of the Railway Labor Act requires that notice be given to all parties involved. Hostlers and outside hostler helpers represented by the Brotherhood of Locomotive Firemen and Enginemen on the Missouri Pacific Railroad are **parties involved** within the meaning of said Section 3, First (j) of the Act, and are therefore necessary parties.

In any event, the claim and contention of the petitioner should be denied on the merits because,

FOURTH—The work involved in placing fuel, water, sand, ice, drinking water or cab supplies consisting of fusees, torpedoes and other flagging equipment on locomotives has never been contracted to any class or craft of employees exclusively, particularly laborers.

FIFTH—Continuous practice for more than 30 years which cannot be contradicted on the record does not support the laborers' contention that the exclusive right to the performance of said work rests exclusively with the class or craft of laborers.

SIXTH—Award No. 1232, Second Division, National Railroad Adjustment Board, does not support the contention of the petitioner; on the contrary, the interpretation of the general chairman, Brotherhood of Locomotive Firemen and Enginemen, relied upon in that award requires a denial of the instant case.

SEVENTH—Overlapping of job functions in the railroad industry is the rule, not the exception. This fact does not support the contentions of the petitioner in this case.

EIGHTH—The undisputed practice existing on this carrier for more than thirty (30) years contrary to the contentions of the petitioner must be given due weight in interpreting the agreement between the parties to this dispute.

For the reasons set forth and fully discussed in this submission, this dispute should be

1. Dismissed for lack of jurisdiction, or in the alternative should be
2. Denied as without agreement support and contrary to past practice.

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.

Claimant was employed as a laborer (Supplyman) at Poplar Bluff, Missouri. On the days stated in the claim hostlers and hostler helpers were permitted to supply Diesel locomotives with flagging equipment, drinking water and fuel oil. The organization contends that this work belongs exclusively to laborers under the firemen and oilers' agreement.

The Scope Rule of the controlling agreement provides in part:

"These rules govern the hours of service and working conditions of stationary engineers, * * *, supplymen, * * *, inside hostler attendants, * * *."

The organization contends that the word "supplymen" in the Scope Rule gives the work of supplying Diesel locomotives with flagging equipment, drinking water, ice and fuel oil to laborers under the firemen and oilers' agreement. We do not think this is necessarily so. In Award 5404, Third Division, it is said:

"Thus it appears we are called upon to determine whether under the confronting facts and circumstances the Scope Rule of the instant Agreement, which does not purport to describe the work encompassed within it but merely sets forth the classes of positions covered, in and of itself gives train and engine callers the exclusive right to performance of all crew calling work on the Carrier's property. * * * Early in the history of the Division of the Board in Award 615, frequently cited with approval in subsequent Awards, we said it is a mistaken concept that the source of the right to exclusive performance of work covered by an agreement is to be found in its scope rule. * * * In between the two extremes to which we have referred, however, is a line of decisions basically founded upon the fundamental and universally recognized legal principle * * * that where a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself. * * *"

See also 6758, 5702, 5803, 7076, Third Division.

The question involved in this case has long been a subject of dispute. It found its way into the hands of Emergency Board No. 76 which stated in effect that such work "may be required" of outside hostler helpers. A Special Board of Adjustment undertook to define the duties of outside hostler helpers and held that the work could be performed by the latter but refused to hold that it was their work exclusively. All negotiations with the carrier have failed to produce any agreement that the work was exclusively that of any craft. It appears to have been the practice for many years for laborers and outside hostler helpers to do this work. Under the circumstances shown by the record, it would constitute a rewriting of the agreement for the Board to say that the work here involved belonged to the firemen and oilers exclusively. To bring about such a result, negotiation is required.

The organization relies upon Award 1232. In that case carrier assigned locomotive firemen to do inside hostler attendants' work, the latter being laborers' work. This is a different situation than where outside hostler helpers are involved, the latter being drawn from the locomotive firemen's ranks. The factual situation distinguishes that award from the dispute before us.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.