

Award No. 2326

Docket No. 2063

2-PRR-CIO-'56

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**THE TRANSPORT WORKERS UNION OF AMERICA, C. I. O.**

**THE PENNSYLVANIA RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement it is improper to assign a Boilermaker Helper to the duties of removing and applying flues to boilers.

2. That accordingly the Carrier be ordered to compensate E. S. Ferguson, Boilermaker Helper the difference between the pro rata helper rate and the pro rata Boilermaker Grade E rate, eight (8) hours on June 19, 1951.

**EMPLOYES' STATEMENT OF FACTS:** There is an agreement between the parties hereto dated July 1, 1949 and subsequent amendments, copy of which is on file with the Board and is by copy reference hereto, made a part of this statement of facts.

At Pitcairn, Pennsylvania, Pittsburgh Division, Central Region the Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of boilermakers and boilermaker helpers.

The aggrieved, E. S. Ferguson, hereinafter referred to as the claimant, is employed at the seniority point as a boilermaker helper.

June 19, 1951, the claimant was assigned to the duties of removing and replacing flues in the boiler of a locomotive crane.

H. R. Amond, a boilermaker was also assigned the same duties.

The claimant worked at one end of the boiler. The boilermaker worked at the opposite end.

The claimant was compensated the pro rata boilermaker helper rate. The boilermaker was compensated the pro rata Grade E, boilermaker rate.

The claimant was required to use pneumatic tools to chip and remove the flues and to dress the flue sheet with a pneumatic-emery wheel. He also was required to set and expand the flues, when the new flues were applied.

Of interest here is the following appearing in Award No. 6650 of the Third Division (Referee Rader):

“ . . . As has been pointed out in numerous awards of this Division (for examples see Awards 6494 and 6495) diligence must be exercised in progressing claims of this nature. Apparently such diligence was not exercised in the instant matter. And we find no presentation of facts in the record of extenuating circumstances to explain the delay prevailing here.

Suffice to say there must have been some doubt in the minds of Petitioners as to the merits of these claims or the same would have been progressed more rapidly after the requests were denied by Carrier. . . .

We are of the opinion that these claims must fail by reason of several factors: (1) Delay in progressing the same on the property. (2) Past practice, and (3) A failure to assume the burden of proof necessary to establish the same for a sustaining award.”

The carrier submits that in view of the above, the claim in the instant case should be denied.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of “grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions”. The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim in this case would require the Board to disregard the agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the agreement. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

The carrier has established that the claimant was properly compensated at the boilermaker helper rate of pay for the service which he performed on June 19, 1951, and that he is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employes in this matter.

**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.

The complaint is that on Tuesday, June 19, 1951, carrier assigned Boilermaker Helper E. S. Ferguson the duties of removing and applying flues in the boiler of a locomotive crane and only paid him therefor at the rate of a helper. It is contended Ferguson should have been paid for the services he rendered on that day at the boilermaker's rate for Grade E work. The relief asked is that carrier be now required to pay claimant the difference in these two rates for an eight (8) hour period.

Carrier claims that the processing of the claim on the property has resulted in an unreasonable delay and, because of that fact, contends we should refuse to consider it. It has taken a long time to handle the claim on the property but no rule in the parties' agreement is pointed out limiting the time in which that must be done. In the absence thereof we are not at liberty to apply such a rule for it is only where it is shown that some damage, injury or prejudice will occur to the party claiming the benefit thereof, because of the delay, that we can properly apply either the doctrine of laches or estoppel. No possible damage, injury or prejudice is pointed out by the carrier nor is any apparent from the record itself for the claim covers only the one (1) day and is not one that has, in any way, increased during the time that has elapsed. In view of that fact we find this contention to be without merit.

Boilermaker's work, Grade E, for the purpose of rate classification is defined as including "building and repairing boilers" and "flue work—applying flues and arch pipes." It is explained as follows: "This grade of work covers general work to build new or repair boilers," and to cover "Men assigned to perform the work specified."

Claimant was, on June 19, 1951, regularly assigned to work the first shift as a boilermaker helper at carrier's Pitcairn Machine Shop, Pitcairn, Pennsylvania, on the Pittsburgh Division of carrier's former Central Region, where it employed a force of boilermakers and boilermaker helpers. On June 19, 1951 claimant was assigned duties of removing and replacing flues in the boiler of a locomotive crane and worked with Boilermaker H. R. Amond while doing so, each working at one end of the boiler. The work claimant performed is described in the parties' joint statement as: "Claimant was required to work on the opposite end of the boiler using air tools to chip and remove the flues and to dress the flue sheet with a pneumatic emery wheel. He also was required to expand and set the flue when the new flues were put in." The record leaves no doubt of the fact that on this day claimant and Boilermaker Amond performed identical services and that such services are within those described to which the boilermaker's rate of pay for Grade E work has application.

Rule 5-F-1 of the parties' agreement provides:

"Mechanics or Apprentices regularly employed as such in their craft shall do work specified as that to be assigned to qualified Mechanics in such craft except:"

Carrier relies on Rule 5-F-1 (b), an exception to the foregoing, and Rule 5-H-1, both of which relate to helpers, as justifying its use of claimant to perform this work and paying him therefor at the helper's rate.

Rule 5-F-1 (b), insofar as here material, provides:

"Helpers assisting Mechanics, \* \* \* shall perform such work as may be assigned to them to the end that they may be kept fully occupied and that the Mechanics, \* \* \*, and Helpers may work jointly to bring the work to a successful conclusion."

Rule 5-H-1 provides, insofar as here material, that:

"Mechanics' Helper work is any work in his craft that he is capable of performing in assisting a Mechanic, \* \* \*, or any work to

which he may be assigned which is recognized as Helper's work in his craft."

A helper is ordinarily an employe who helps or assists another employe in the performance of the latter's duties. The work here performed was that of a boilermaker but, under the rules herein set forth, a helper may be assigned to assist a boilermaker in performing them if help is needed for that purpose, thus permitting both to join in the work in order to bring it to a successful conclusion. In doing so the helper will naturally perform some of the duties of a boilermaker but the supervision of the work will remain with the boilermaker and he will be responsible for its proper performance. Just where the line of demarcation is reached that lies between the two, within the meaning of the rules of the parties' agreement, is not always easy of determination and must necessarily be one of fact. However, under the facts as admitted by the parties, we do not think there is any doubt here. Both claimant and Amond were separated from each other while performing their duties, which were the same, and each was, in this situation, necessarily responsible for the work he performed. It was Boilermaker's Grade E work for the purpose of determining the pay an employe should receive for performing it. For awards coming to a comparable result see 1174 and 1273 of this Division.

Claimant was entitled to receive that rate under the provisions of 4-J-1, which provides:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate for his entire tour of duty."

Here claimant filled the position of a boilermaker.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.