

Award No. 2698

Docket No. 2346

2-MP-BM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Boilermakers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Boilermakers were improperly assigned to rebuilding and reinforcing the transfer table at North Little Rock, Arkansas, on March 14, 1955 through March 22, 1955 and April 6, 1955 through April 19, 1955 for a total of 480 hours of Boilermaker's work and 106 hours of Boilermaker-Welder's work.

2. That accordingly the carrier be ordered to compensate the following Boilermaker and Boilermaker Welders, equally dividing the time between them:

E. J. Makoski
F. J. Kojeski
J. K. McArthur
P. P. Molter

N. P. Voegelé
A. G. Boatman—Welder
J. H. Greenwood—Welder

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 carrier sets forth in its submission a letter from C. L. Lampert, General Chairman of the Brotherhood of Maintenance of Way Employes, that the latter claims the work in question in this docket. Therefore, it is necessary

that this Division issue a third party notice to the Brotherhood of Maintenance of Way Employees pursuant to the requirements of Section 3 first (j) of the Railway Labor Act.

We find under the latest decisions of the Federal Court that where a genuine third party interest is involved in a claim, due notice must be given to the third party of the pendency and hearing of said claim. Otherwise the award rendered by the Division is subject to challenge in the courts as being invalid and unenforceable. We, therefore, find that this Division must give notice of the pendency of the claim and of the hearing to the Brotherhood of Maintenance of Way Employees before this claim can be heard on its merits.

AWARD

Consideration of and decision on the merits of this claim is deferred pending notice by the Division to the parties, Carrier, Brotherhood of Maintenance of Way Employees, System Federation No. 2, Railway Employees' Department, A.F.L.-C.I.O. (Boilermakers), as contemplated by Section 3 First (j) of the Railway Labor Act as interpreted by the Federal Courts.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1957..

DISSENT OF LABOR MEMBERS TO AWARD No. 2698

The majority's holding that notice should be given to the Brotherhood of Maintenance of Way Employees is erroneous inasmuch as the dispute covered in the instant claim relates only to the proper interpretation and application of the agreement between System Federation No. 2, Railway Employees' Department, A. F. of L.-C. I. O. (Boilermakers) and the Missouri Pacific Railroad Company.

This Division has held in a number of cases, as have the courts, that this Board's function is limited to the interpretation and application of the agreements upon which the claims are based, and that questions of the validity and enforcement of the agreements as so interpreted are for other tribunals. Nor can the Division revise or amend agreements so as to resolve conflicting or overlapping coverage of agreements of different organizations in cases of this sort. Section 6 of the Railway Labor Act prescribes the method for making changes in agreements affecting rates of pay, rules, or working conditions.

It is our considered opinion that Awards 340, 1359, 1628, 2316 and 2559 of this Division are awards that state the correct rule in this type of case and should have been followed. Therefore, no notice is required.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink