

Award No. 3922
Docket No. 3852
2-MP-BM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Boilermakers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the controlling agreement, a sheet metal worker was improperly assigned to assist a boilermaker.

2 — That accordingly the Carrier be ordered to compensate boilermaker F. W. Griffin four (4) hours at the straight time rate account of this violation.

EMPLOYEES' STATEMENT OF FACTS: Missouri Pacific Railroad Company has a diesel shop in Kansas City. At this shop we have boilermakers employed but no boilermaker helpers. Some of the diesel units were equipped with skirts below the frame. These skirts were only for looks and made it almost impossible to keep the oil tanks which were behind the skirts clean, thereby causing federal inspectors to complain of dirty oil tanks. Management decided to remove these skirts and a boilermaker was assigned to perform this duty with an oxyacetylene torch. A piece of this skirt fell, striking the boilermaker on the arm which caused a severe laceration to said arm. After this accident two boilermakers were assigned to the job account of no boilermaker helper being employed. On June 14, 1959, Boilermaker Joe Steffen was assigned to cut off the skirts from diesel unit 515-b. Sheet Metal Worker Lovelace was assigned by the foreman to assist Boilermaker Joe Steffen on June 14, 1959, which is the cause of the instant dispute.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

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

The carrier sometimes had two boilermakers work together when the men were available and could be spared from other duties for that purpose so that the work could be done faster. On the other hand, it was not always convenient to use two boilermakers. The work was performed as the units came into the diesel facility for routine maintenance and the skirts were cut off when the units were to be in the shop long enough so that this work could be performed. The work had to be done when the diesel unit was available. The timing was not dependent upon the availability of two boilermakers. When it was not convenient to use two boilermakers, one boilermaker was instructed to do the work and he was instructed to perform the work safely. Supervisors realize that it may take one man a little longer to perform the work than the same work could be done by two men. Where one man was assigned, the carrier in some cases instructed whatever employe was available to stand by with a water hose. In at least one other case, a laborer was instructed to stand by with a water hose while a boilermaker cut off the skirts.

Holding a water hose does not constitute boilermakers' work but is simply the taking of necessary precaution against the possibility of fire, which is the duty of all employes. For that reason, the claim must be denied.

The claimant, Boilermaker Griffin, as pointed out by Master Mechanic McCaddon, was on duty at the time the work involved in this claim was performed and would have performed the work during his regular tour of duty if he had been so instructed. No claim lies for an employe on duty and under pay. The principle was succinctly stated in Award 18923 of the First Division without the aid of a referee. There the Board said

"There is a showing that claimants herein were on duty and under pay at the time the service giving rise to this claim was performed. This Division has in fifteen previous awards, the latest of which are Awards 16264, 16507, and 18625, denied like claims where claimants were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here."

For that reason, no claim would lie on behalf of Boilermaker Griffin in any event since he was on duty and under pay and suffered no loss of compensation.

Holding a fire hose as a precaution against fire is not something that has been contracted exclusively to boilermakers by Rule 62 or any other rule in the shop craft agreement but is simply a safety measure which is the duty of all employes when required. The claim is not supported by the agreement and is trivial and entirely lacking in merit and must be declined.

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.

Parties to said dispute waived right of appearance at hearing thereon.

In this case boilermaker Steffen was using a cutting torch to remove the "skirts" from a diesel unit when carrier's general foreman asked a sheet metal worker to stand by with a water hose, which was to be used to fight any fire that might start if sparks came into contact with grease accumulations on or near the oil tanks.

In support of the claim that a second boilermaker rather than a sheet metal worker should have been assigned to man the hose, Rules 26(a), 29(a), 62, 63, 69, and 74 have been brought to the Division's attention. As to 26(a) and 29(a), the Division finds that the sheet metal worker herein did not perform boilermaker, welder, or cutting torch mechanics' work; and these Rules were not violated here. As to 62 and 63, the Division finds that the holding and/or use of a fire hose is not listed among the services reserved to boiler-makers and their helpers; these two Rules were not violated.

Rule 69 says that a cutting operator is to be given a helper when necessary or when essential for his personal safety. The record here fails to establish that the standby hose was needed for the instant cutter's safety. Rather does it persuade that the hose was to be used to protect the engine. This Rule may not be judged violated.

Rule 74 deals with the use of a helper when tapping and reaming is being done in a locomotive firebox. This Rule must be held inapplicable here.

In sum, the schedule rules fail to lend support to the thesis that, when carrier decides hose-holding is needed while a boilermaker is torch-cutting away the skirts of a diesel unit, no one but a boilermaker or helper may hold or use the hose.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January 1962.