

Award No. 3923
Docket No. 3922
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, other than boiler-makers were improperly assigned to repair the turn table at St. Louis, Missouri.

2. That accordingly the Carrier be ordered to compensate the following boilermakers for the specified days below:

L. J. Wolf	4 days @ the welder's rate
H. Cromer	2 days @ the welder's rate
E. F. Davis	4 days @ boilermaker's rate
C. E. Hooten	2 days @ boilermaker's rate
L. C. Smith	2 days @ boilermaker's rate

EMPLOYEES' STATEMENT OF FACTS: On or about September 8, 1959, the Missouri Pacific Railroad Co., hereinafter referred to as the carrier, derailed a locomotive on the turntable located at its facilities at Chouteau Avenue in the St. Louis Terminal. Said derailment knocked the steel cab, housing the turntable controls, off the turntable and severely damaged it.

In addition the derailment damaged the wood deck and the plate and guide that align the turntable with the approach track.

On September 8, 1959, carrier, assigned maintenance of way employees to make necessary repairs to the turntable, including the repairing and applying of the operator's steel cab.

Boilermaker Welders L. J. Wolf and H. Cromer and Boilermakers E. F. Davis, C. E. Hooten and L. C. Smith are regularly employed as such by the

is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purpose for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

As stated in *National Labor Relations Board v. Prettyman*, 117 Fed. 2d 786,

"The procedure must harmonize with the characteristics of our system of government that the law is supreme."

This is what Referee F. L. Fox had in mind in First Division Award No. 5862 when he said

"When the breach occurs the law steps in and prescribes the method of compensation in damages."

and nowhere can there be found any judicial decisions supporting your Board's action in assessing penalties for the violation of collective bargaining agreements where none have been provided by the parties who negotiated said agreements. For these reasons which have been uniformly upheld by every court in the land before which this issue has been raised, your Board should never assess a penalty and where this has been done it has been done without the sanction of the law.

The employees have not even argued that the request for money in the second part of the claim is based on any rule in the agreement. Under similar circumstances we have found the frank admission such claims are a request to penalize the carrier. The second part of the claim before your Board is nothing more than a request to penalize the carrier. Your Board has no authority to entertain such a claim.

In conclusion, let us repeat that neither Rule 62 (a) nor any other rule in the agreement supports the claim on its merits. In fact, the employees have not based the claim on the rules. The only authority cited is Award 2938 of this Division but we have seen that award pertained to transfer tables and not turntables, but even there the Board denied the claim stating Rule 62 (a) did not contract such work to boilermakers exclusively and past practice proved that boilermakers had not performed such work. Similarly here the claimants have not submitted evidence that boilermakers have performed the work in controversy exclusively. The claim must be denied on its merits and, in any event, the penalty requested must be refused.

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 were given due notice of hearing thereon.

Rule 62(a) says that the repairing of steel cabs is boilermakers' work; and nothing in said classification of work rule permits the reasonable conclusion that said cabs are confined to locomotives. Accordingly the Division must find that the repairing of the steel sides and top of the turntable cab here in dispute should have been done by boilermakers.

The Division finds further that (1) nothing in Decision No. SC-67 and Supplement No. 1 thereto negates the above-stated finding; (2) in any case the Boilermakers were not signatory thereto; and (3) there is no proper basis of record for distinguishing transfer tables from turntables.

These findings affirmatively dispose of Claim 1 to the extent stated. The second claim remains to be considered. Following Award 1369, the Division is unable to agree with carrier that penalties for violations such as that found above are not proper. However, petitioner here makes no positive showing that the claimants named and the amounts of time claimed are the correct ones. For example, it is not established that men and time for the removal and repair of the latch bar and the wooden deck of the cab are not included in Claim 2. Accordingly, this Claim is remanded to the parties for cooperative and accurate settlement on the property in accordance with the Division's finding on Claim 1, namely that properly available boilermakers should have repaired the steel sides and top of the turntable cab.

AWARD

Claim 1 sustained per findings.

Claim 2 remanded to the parties per findings.

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.