

Award No. 4016

Docket No. 3934

2-B&O-BM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Boilermakers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated during the month of January 1960 when the Carrier assigned other than Boilermakers to rebuild a Fuel Storage Tank at the Boiler Room of the Wood Treating Plant at Green Spring, West Virginia.

2. That accordingly, the Carrier be ordered to compensate Boilermaker James E. Irons and Boilermaker Helper David A. Breighner (139) hours each at the applicable pro rata rate.

EMPLOYES' STATEMENT OF FACTS: The Baltimore & Ohio Railroad, hereinafter referred to as the carrier, leased the operation of the Treating Plant to the Koppers Wood Preserving Company at Green Springs, West Virginia. The maintenance work is performed by the carriers' employees.

During the time the carrier operated this plant, boilermakers from Cumberland, Maryland Roundhouse were assigned to do boilermakers work at this Wood Preserving Plant.

The carrier shipped a second hand steel water tank, in small sections, to Green Spring, West Virginia where it was reassembled adjacent to the boiler room for use as a storage tank for wood waste products from the Wood Working Mill.

This wood waste (sawdust & chips) is conveyed to the boilers of the treating plant by means of an automatic stoker arrangement.

The carrier assigned maintenance of way forces to rebuild this storage tank.

property for many years have confirmed the use of B&B forces coming under the maintenance of way agreement to do this work. There is no basis here for any claim from the claimant boilermakers. That craft had no rights to this work. This claim is not valid and the carrier here asks that it be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Carrier owns a Wood Treating Plant at Green Spring, West Virginia, which is operated by the Koppers Wood Preserving Company. In January, 1960, maintenance of way employees of the Carrier disassembled an old steel water tank at Ulrichsville, Ohio, and cut it into small sections. The latter were shipped to Green Spring, West Virginia, where they were re-assembled for use as a receptacle to hold sawdust and chips from the wood working mill. The receptacle is 36 feet in height, 24 feet in diameter, and $\frac{1}{4}$ inch thick. All re-assembling work was performed by maintenance of way employees of the Carrier.

The two Claimants, Boilermaker James E. Irons and Boilermaker Helper David A. Breighner, contend that the work of re-assembling the receptacle should have been assigned to them in accordance with Rules 71 and 73 of the applicable labor agreement. They request that the Carrier be ordered to compensate them for 139 hours each at the applicable pro rata rate.

Since the Carrier asserted that the work here in dispute is covered by the Rules Agreement between it and the Brotherhood of Maintenance of Way Employees, effective as of April 1, 1951, due notice of the pendency of the instant case was given to the Brotherhood in accordance with Section 3 First (j) of the Railway Labor Act, as amended. However, the Brotherhood has not seen its way clear to intervene in this case.

Rule 71 on which Claimant Irons mainly relies reads, as far as pertinent, as follows:

"Boilermakers' work shall consist of laying out, cutting apart, building, or repairing boilers, tanks, and drums . . . laying out and fitting up any sheet iron or sheet steel work made of 16 gauge or heavier . . . oxyacetylene, thermit and electric welding on work generally recognized as boilermakers' work . . ." (emphasis supplied).

Claimant Breighner mainly relies on Rule 73 which covers work of employees assigned to help boilermakers.

The basic question posed by the instant dispute is whether the re-assembling work performed at Green Spring, West Virginia, involved the building of a tank within the purview of Rule 71. The answer is in the affirmative.

The Carrier asserts that the water tank lost its identity as a tank when it was re-assembled for use as a receptacle to hold sawdust and chips and thus became a "railroad structure" or a "silo." We disagree. The fact that the tank in question is no longer used to hold liquid material (water) but solid material (sawdust and chips) did not change it to a railroad structure, such as a building, bridge, dam, framework, and the like. Moreover, the original equipment in place at Ulrichsville was a tank. Substantially the same equipment was re-assembled with some adjustments for its changed use. Neither such adjustments nor the fact that the Carrier has chosen to store different materials in the container at Green Spring after re-assembly changed its essential character. It was a tank at Ulrichsville. For all practical purposes, it is a tank and not a silo at Green Spring.

In further support of its position, the Carrier claims that the operation carried out here in January, 1960 was no different from similar operations carried out by maintenance of way employes on its property for many years and that this practice has been so well established on its system as to defy any allegation to the contrary. The Claimants have strenuously denied the existence of the alleged practice. In order to be determinative of the rights of the parties to a labor agreement, it must convincingly be demonstrated that a past practice has been of long continued duration, well known to and mutually accepted by the parties. See: Clarence M. Updegraff and Whitley P. McCoy, **Arbitration of Labor Disputes**, Second Edition, Washington, D. C., BNA Incorporated, 1961, p.226 and references cited therein. The record is devoid of any specific instances from which we could reasonably conclude the existence of a consistent, long continued, and mutually recognized practice as claimed by the Carrier.

For the above stated reasons, we are of the opinion that the work involved in re-assembling the tank at Green Spring, West Virginia, was boiler-makers' work which should have been assigned to the Claimants in accordance with Rules 71 and 73 of the labor agreement. Accordingly, we hold that the Claimants are entitled to compensation for 139 hours each at the applicable pro rata rate.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1962.