

Award No. 4141

Docket No. 4135

2-RDG-FO-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Firemen and Oiler craftsmen were improperly used to unload supply coal for Port Richmond Power Plant, Philadelphia, Pa.

2. That the Carrier be ordered to:

(a) Pay Larry Hayman at the rate of time and one-half, his wages for:

2½ hours for Friday, January 13, 1961

4 hours for Monday, January 16, 1961

4 hours for Tuesday, January 17, 1961

(b) Pay Joseph Uhl at the rate of time and one-half, his wage for:

2½ hours for Friday, January 13, 1961

4 hours for Tuesday, January 17, 1961

(c) Pay Dewie Gardenhire at the rate of time and one-half, his wages for four hours for Monday, January 16, 1961.

EMPLOYEES' STATEMENT OF FACTS: The above named claimants are classified as laborers in the Mechanical Department at Port Richmond Terminal, where they are assigned to perform general laborers' duties in and around the Mechanical Department facilities which include the power plant.

"I have asked Manager Steimling for the facts in this matter and he advises me there were no ore boats working at Pier 14 on the dates of your claim and because of this car pullers and operators assisted in dumping power house coal.

"It is my further understanding this has been the practice for many years, not only for electricians, but employes of every craft to assist in maintenance when no ships are in.

"For these reasons, I see no violation of your agreement and must respectfully deny your claim."

The claim was again reviewed by the parties and carrier's denial thereof affirmed.

It is the position of the carrier that the practice of many years requires a denial of the claim of the organization in this docket. Rule 1 — Scope — of the collective bargaining agreement in effect between the parties is general in nature and merely lists the various occupations covered by the rules of the agreement. The Board has held on many occasions in reviewing and applying similar rules that it is proper and reasonable to look at the practice in order to determine the usual and customary duties and tasks of the scope employes. The unloading or dumping of coal at the Port Richmond Power House has always been performed by firemen and oilers forces augmented and assisted by laboring forces on Pier 14 (car pullers, etc.) who are represented by the Electrical Workers Brotherhood. It will be recalled that the winter of 1960-1961 was particularly severe with extreme temperatures and heavy snows. Under such conditions it is more difficult to thaw coal for dumping at the power house, requiring that steam lances remain in the coal for longer periods of time and requiring more effort and labor to actually clear the cars of coal. Likewise, at this time of the year and in severe weather carrier's coal traffic business normally picks up, which requires more dumping of coal into vessels berthed under carrier's coal dumper at Pier 18, Port Richmond. When coal business is running heavy, it is customary to send firemen and oilers laborers from the power house to assist and augment the car riders at Pier 18 who are also represented by the Firemen and Oilers Brotherhood. All of the foregoing factors consistently dictate that employes assigned to Pier 14 aid in dumping power house coal which has been the past practice at Port Richmond. The necessity for flexibility and fluidity in assignment of personnel has been recognized as essential and desirable to the particular operation at Port Richmond. Consequently, on dates in claim, when car pullers and operators from Pier 14 assisted in dumping of coal, carrier maintains that this was normal and usual practice at that point under existing collective bargaining agreements and was not in violation of any of the rules of the schedule agreement in effect between the parties.

Under all the facts and circumstances, carrier maintains that there has been no violation of any rules of the schedule agreement and claim for additional time at punitive rate for power house laboring forces because of work performed by forces from adjacent Pier 14 is not supported by any rules of the schedule agreement. Carrier submits, therefore, that the Second Division National Railroad Adjustment Board, in the exercise of its statutory function must deny the claim of the organization in its entirety.

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.

The three Claimants, Larry Hayman, Joseph Uhl and Dewie Gardenhire, worked as laborers at the Port Richmond Power Plant and Terminal, Philadelphia, Pennsylvania, from 7:00 A. M. to 3:00 P. M.

On January 13, 1961, Hayman and Uhl after completing their regular work tour were assigned to unloading coal from 3:00 P. M. to 8:30 P. M.—at which time they were sent home. From 8:30 P. M. to 11:00 P. M., on that same date, employes from the Electrical Craft continued the work of the two Claimants—Hayman and Uhl.

On January 16, 1961 and again on January 17, 1961, Electrical Craft employes were used for four hours on each day to unload coal at the Power House.

The Carrier contends that the Scope Rule of the Firemen and Oilers Craft is general in nature and both the Rule and past practice permit the Carrier to use car pullers and operators from the Electrical Craft to augment and assist laborers from the Firemen and Oilers Craft.

If all the facts were as the Carrier contends, we would, of course, look to past practice for a proper determination of the issue in dispute. But such is not the case, because on January 13, 1961, Claimants Hayman and Uhl were not “augmented and assisted” by laboring forces from the Electrical Craft but were, in fact, displaced by them. It is significant that nowhere in the record has the carrier contended or argued that it had such a right either by contract or past practice.

As for the dates of January 16, 1961 and January 17, 1961, the record fails to indicate whether all the Claimants were “augmented and assisted” on those dates or were in fact displaced by other laboring forces. In the absence of such evidence, the Board cannot make a proper determination, therefore, we must deny that portion of the Claim.

Accordingly, the Board rules that Claimants Hayman and Uhl are each to receive two and a half hours pay—at the pro rata rate—for January 13, 1961.

AWARD

Claim sustained in keeping with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.