



Award No. 4982

Docket No. 4916

2-PRR-BK-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Blacksmiths)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the Current Agreement Blacksmith Helper H. W. Flory was improperly compensated for operating the Heavy Steam Hammer for the Heavy Forge Crew at Smith Shop No. 1 - Altoona Heavy Repair Shop, Altoona, Pennsylvania.

2. That accordingly the Carrier be ordered to additionally compensate H. W. Flory the difference between "P" grade rate and the "P" & 6¢ grade rate beginning November 29, 1961.

EMPLOYES' STATEMENT OF FACTS: H. W. Flory, hereinafter referred to as the claimant, owned a job as a blacksmith helper, first shift in Smith Shop No. 1 at the Altoona Heavy Repair Shops with a seniority date of 2-26-1916.

The duty of this position was to operate the steam hammer for the heavy forge crew, assist in loading & unloading the furnace, sledging, operate furnace doors and keep all excess scrap away from Hammer.

This dispute has been handled with all officials of the Pennsylvania Railroad, hereinafter referred to as the carrier, designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustments.

The agreement effective April 1, 1952, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the work involved in this dispute is recognized by the carrier as being blacksmith helpers grade "P" & 6¢ rate. This is affirmed by the provisions of the graded work classification for the blacksmiths craft appearing on pages 208 and 209 of the current agreement which reads in part as follows:

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreements, which constitute the applicable agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreements between the parties to them. To grant the claim of the employees in this case would require the board to disregard the agreements between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute or established by practice. The board has no jurisdiction or authority to take any such action. See Second Division Award No. 1122, Third Division Award Nos. 6803, 4763 and Fourth Division Award No. 242.

CONCLUSION

The carrier has shown that claimant was properly compensated at the grade "P" rate as provided in the graded work classification for blacksmith helpers, for work explicitly covered in provisions concerning helpers contained in the blacksmiths' classification work rules and that the employees have completely failed to sustain their burden of proof that claimant was entitled to the differential.

Therefore, the carrier respectfully requests that your board dismiss or deny the claim of the employees in this matter.

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.

The present claim rests on Petitioner's contention that Claimant, a blacksmith helper at Altoona, Pennsylvania, who receives the grade "P" wage rate, is entitled to compensation at the grade "P" rate plus six cents.

In support of the claim, Petitioner relies on a Note that appears on pages 208 and 209 of the applicable Agreement and prescribes that "Blacksmith helpers working * * * with forgers and blacksmiths working on

material 4" and over * * * " will receive a differential that in this case would amount to six cents. Accordingly, the critical question is whether or not Claimant works with forgemen working on material four inches and over.

Claimant's main duty is to operate a steam hammer for a forge crew, but that fact is not helpful to his claim since it is undisputed that he would be entitled to receive only the "P" rate without the six cents differential if his work were confined exclusively to operating the steam hammer. There is considerable controversy regarding the remaining duties of his position. Carrier contends that they comprise no more than ten percent of his work and, in part, consist in helping to change dies. Petitioner, on the other hand, asserts, and Carrier denies, that Claimant is also compelled to assist in operating furnace doors, keeping scrap away from the hammer, sledging and loading and unloading the furnace.

The difficulty with Petitioner's position is that it has presented no facts or affirmative proof that would enable this Board to find that any of Claimant's duties amounts to working with forgemen and blacksmiths within the meaning of the Agreement. This is a serious omission of an essential element in Petitioner's case, and the fact that a carrier may not have cooperated to a reasonable extent in making joint checks of an employee's duties, though material in some respects, can not supply essential proof that is absent from the record.

We are not satisfied that Petitioner has shown that Claimant has worked with forgemen within the meaning of the Agreement and since the burden of proof rests with Petitioner and inasmuch as we are not at liberty to base findings on mere conjecture and assumption, this claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.