

Award No. 5039

Docket No. 4730

2-RDG-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Joseph A. Reading and Henry R. Heni have been unjustly treated by management's unilateral decision to eliminate work, which is covered by agreement, and engaged a concern to fuel the passenger equipment at Pottsville Station.

2. That the Carrier be ordered to reimburse the claimants for lost wages and any other benefits they may have been deprived of by loss of their work to outside concern.

EMPLOYEES' STATEMENT OF FACTS: Laborers Joseph A. Reading and Henry R. Heni, hereinafter referred to as claimants were employed at the St. Clair Engine Terminal as such by the Reading Railroad Company, hereinafter referred to as the carrier. The claimants were employed at St. Clair until July 1, 1963, when they were furloughed and the carrier obtained the services of an outside fuel delivery concern with a tank truck to fuel the passenger equipment RDC (Budd cars and diesels) formerly fueled at St. Clair at Pottsville Station. Before the reduction there were employed at St. Clair two laborers, 1st shift; one laborer, 2nd shift; and two laborers plus two relief men, 3rd shift. After reduction one laborer was employed at St. Clair on each shift plus the laborer on the fuel truck. The carrier maintains a fuel truck which is driven by a member of the clerks and accompanied by a laborer from St. Clark who services the equipment at various points. Carrier's fuel truck works 9:00 p.m. to 5:00 a.m. on Monday through Friday. On Monday, Wednesday and Friday, truck's starting point is St. Clair goes to Gordon and fuels two engines. It takes one and one half hours to drive and 30 to 40 minutes to fuel the two engines. The truck goes from Gordon to Shamokin and it takes one hour and 20 minutes to drive at which point four engines and stationary heater boiler tank have to be fueled. At Shamokin it takes one hour and 45 minutes. The truck returns to St. Clair and it takes two hours to make the trip from Shamokin to St. Clair. On Tuesday and Thursday, the truck goes to Pottsville the trip taking 25 minutes from St. Clark to Pottsville. At Pottsville, the heater tank and diesel crane is fueled and it take one hour at Pottsville. The truck

Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, effective August 16, 1940, corrected August 1, 1946 and May 1, 1953, is on file with the board and by reference is made a part of this submission.

POSITION OF CARRIER: At the outset carrier desires to point out that the delivery of fuel to rail diesel cars at Pottsville Passenger Station by an oil company truck effective with the inception of such rail diesel car passenger service between Philadelphia, Pa. and Pottsville, Pa. was not and is not now in violation of any rule of the effective agreement between carrier and the Brotherhood of Firemen and Oilers.

At many points on its system, carrier purchases fuel direct from an oil company and such fuel is delivered by oil company truck to the fuel tank of a diesel locomotive during tour of duty at various points in yards and in road territory. No protests or claims have been received from the organization that such handling at other locations was in violation of the effective rules or that employes under the firemen and oilers' agreement were adversely affected thereby.

In the discussion and handling of the instant case on the property there was no evidence or showing that claimants here involved were adversely affected or suffered any loss of earnings as a result of carrier's purchase of fuel from an oil company and the delivery of same to the rail diesel car fuel tanks by such company. Carrier submits that the handling involved constituted the exercise of managerial judgment in adopting efficient, economical and practical method of operating its passenger service between Philadelphia, Pa. and Pottsville, Pa. with new and modern equipment in an effort to improve service to the public and reduce costs inherent in the operation of such service. Furthermore, employes under the fireman and oilers' agreement have not in the past been assigned to fuel rail diesel cars at Pottsville Passenger Station as this work did not exist prior to carrier's acquisition of this new equipment.

Carrier submits that the claim as here submitted to the board is vague and unspecific concerning the losses allegedly sustained by claimants as a result of the handling here involved, and merely requests reimbursement for loss of wages and "any other benefits they may have been deprived of." Carrier reiterates there was no showing in the handling on the property that claimants lost wages or any other benefits as a result of the handling in the instant case. Under the facts and circumstances present in the instant case and for the reasons stated hereinbefore, carrier submits that the claim as here submitted is without merit and is unsupported by the rules of the effective agreement, and requests the Board to so find and deny the claim.

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 claim is that the Claimants were "unjustly treated by management's

unilateral decision to eliminate work, which is covered by agreement, and engaged a concern to fuel the passenger equipment at Pottsville Station." The Claimants are laborers, who are the 32nd category in the Scope Rule of the Agreement, which does not specify their work. Nothing in the Rules provides that laborers shall have the contractual right to fuel motive power.

The Claimants were furloughed on July 1, 1963, the same day on which the Carrier placed rail diesel cars in passenger service between Philadelphia and Pottsville, where fuel was delivered directly to them by the truck of the oil company from which it was purchased. This equipment had not heretofore been used or serviced on Carrier's lines. All but one of these trains arrives at Pottsville outside of the tour of duty of Carrier's oil truck at St. Clair engine house nearby, which services various equipment in the immediate area.

The Claimants had theretofore worked at St. Clair engine house; Reading was a laborer there; Henri was not regularly assigned but was working extra as vacation relief and filling temporary vacancies of firemen and oilers off duty for various reasons. Neither of them was working on the Carrier's St. Clair fuel truck, which was not affected by the practice complained of and continues on its regular five day week with its crew of one clerk and one laborer as before.

In denying the claim on the property, the Chief Mechanical Officer wrote: "The laborer position assigned to the fuel truck has not been abolished as your letter would imply.

"The reduction of one laborer at St. Clair Engine House on July 1, 1963 was actually the removal of an extra position which we agreed to establish and hold only until April 30, 1963. As you will recall, this understanding was part of the settlement of a previous claim at Shamokin Engine House."

These statements are not denied, and it is clear that Claimant Reading's furlough from his laborer's position at the Engine House and the termination of Claimant Henri's relief work there had no connection with the fueling of the new rail diesel cars at Pottsville direct from the oil company's truck, instead of having it delivered to storage tanks at St. Clark Engine House and then taken to Pottsville by Carrier's fuel truck. No employee is shown to have been affected.

Since this work was not specified in the Agreement as laborer's work and had not theretofore been done by them, and since the action complained of did not cause a furlough or loss of employment for either of the Claimants the 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 3rd day of February, 1967.

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