



Award No. 5546
Docket No. 5337
2-PC-BK-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

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

PENN CENTRAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Current Agreement Blacksmith Helper, P. M. Smith was improperly compensated for lighting the Furnace in the Welding Shop at Altoona Heavy Repair Shop, Altoona, Pennsylvania.

2. That accordingly the Carrier be ordered to additionally compensate P. M. Smith three (3) hours' pay at the "P" Grade Rate for each work day between December 28, 1963 and February 26, 1964 as provided by Rule 2-A-1e.

EMPLOYEES' STATEMENT OF FACTS: Blacksmith Helper P. M. Smith, hereinafter referred to as the Claimant, owns a regular Bulletined position on the 12:00 midnight to 8:00 A. M. shift at Altoona Heavy Repair Shop the "Major Duty" of the position is to light and maintain heat on the Furnaces in Blacksmith Shops No. 1 and No. 2 under the jurisdiction of the Blacksmith Shop Foreman. See Exhibit A attached.

The Welding Shop Furnace is in a building two (2) hundred yards from the Blacksmith Shop and is under the jurisdiction of the Welding Shop Foreman.

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 EMPLOYEES: It is submitted that Claimant Smith owns a regular Bulletined position located in Blacksmith Shops No. 1 and No. 2 the "Major Duty" of which is to light and maintain heat on Furnaces located therein in accordance with Rule 2-A-1(b) reading in pertinent part as follows:

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 the Claimant only performed work of his regular assignment at the location of his regular assignment and that, even if he were not considered to be working at the location of his regular assignment, he did not perform work at other than the location of his regular assignment for a period of four (4) hours or more, and that he is not entitled to three (3) hours' pay additional on the dates in question. The Carrier has also shown that the Employees have completely failed to sustain their burden of proof that any rule of the Schedule Agreement, or interpretation thereof, was violated. Therefore, the Carrier respectfully requests that your Board deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced.)

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 issue herein is whether or not Carrier violated the agreement governing the parties to this dispute when it required claimant to light the furnaces in the Welding Shop at Altoona, Pennsylvania.

Carrier changed the tour of duty of the position of Blacksmith Helper, held by Claimant Paul M. Smith, Blacksmith Shops, from 12:00 Midnight to 8:30 A. M. by abolishing the job and re-advertising it by Bulletin No. 399, dated May 13, 1963, with assigned work hours from 12:00 Midnight to 8:00 A. M. Claimant was awarded the position effective May 21, 1963. The bulletin listed the major duty of the position as: "Must be able to light furnace in Smith Shops No. 1 and No. 2 or any other work assigned."

Petitioner bases this claim on the contention that Claimant was required to light and maintain the furnaces located in the Welding Shop Building, a short distance from the Blacksmith Shops, in violation of the major duties to be performed by Claimant as set forth in said Bulletin No. 399; that as a result of Carrier requiring claimant to light and maintain the furnaces in the Welding Shop, Carrier violated the provisions of Rule 2-A-1 (e) of the Agreement, the pertinent provisions thereof which provide as follows:

"Except as provided in Transport Workers Regulation 2-A-4 (Rule 2-A-5 for System Federation), an employee moved from one position to another on the same shift, at the instance of Management, will receive an additional three (3) hours' pay at the straight time rate of the regular assignment he holds for each day he is required to work on another position."

The Carrier argues that the intent of Rule 2-A-1 (e) requires not only for an employee to be removed from his position but also that after being removed he assumed and filled another and different position, which was not done in this instance; that the work of lighting furnaces in the Welding Shop has been performed by the holder of Claimant's position since June 21, 1949 and the work involved has been a minor duty of Claimant's position; that even if it were to be assumed that the Welding Shop is not included in the location of Claimant's regular assignment, Claimant did not perform work at a location other than that of his regular assignment for a period of four (4) hours or more as required by the Memorandum of Understanding between the parties hereto, dated February 10, 1965.

First, from a review of the record it is seen that Claimant was not moved from one position to another on the same shift within the intent and purpose of Rule 2-A-1 (e) of the Agreement controlling this dispute. The work performed by Claimant herein, including the work of lighting the two furnaces in the Welding Shop, was work incidental to Claimant's regularly assigned duties. Claimant's regular duties consisted of lighting and maintaining some 16 other furnaces in the Blacksmith Shops. Therefore, the work of lighting the two furnaces in the Welding Shops was not work or duties of another and separate position. Further, by past practice this work has been performed by the prior holder of Claimant's position since March of 1959. Therefore, we find that Claimant was not moved from one position to another on the same shift when he performed the duties of lighting and maintaining the two furnaces in the Welding Shop.

Second, even if we were to adjudge that Claimant was moved from one position to another on the same shift in violation of said Rule 2-A-1 (e) of the Agreement, no evidence was adduced by Claimant showing that he was assigned to the performance of work not ordinarily included in his regular assignment for a period of four hours or more at the location of his regular assignment.

The fact that Carrier instructed Claimant not to light the furnaces in the Welding Shop until 4:45 A.M. each morning is not conclusive proof that Claimant spent 4 hours or more of work not ordinarily included in his regular assignment.

Therefore, for the aforesaid reasons, 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 October, 1968.