

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern, Inc., is in violation of the current Agreement when refusing to establish Coal and Ash Men's rate in the Burlington Northern, Inc. Power Plant at 14th Street, Chicago, Illinois.
2. That Laborers W. M. Rayburn, Robert O'Neil and Benjamin Young, who are at present performing the duties of Coal and Ash Men as set forth in the controlling Agreement, be allowed Coal and Ash Men's rate, and further these employees be paid the difference between the Unclassified Rate and the Rate of Coal and Ash Men for all time worked beginning with the effective date of the controlling Agreement which is May 18, 1970.

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 employees 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.

Claimants hold positions of Unclassified Laborers at the 14th Street Power Plant, Chicago, Illinois. They hoe ashes from the cinder pits of the steam boilers onto conveyor belts which removes them from the building. They also dump coal cars and gondolas onto conveyor belts that carry coal bunkers to boilers. They are paid the hourly rate of "Unclassified Laborers" as negotiated by the parties and as it appears in Appendix "A" of the Agreement. Employees are requesting that they be paid the hourly rate of "Coal and Ash Men and Chauffeur", which also appears in said Appendix "A" and which is 15¢ an hour higher than the rate for "Unclassified Laborers".

Employees contend that the Claimants are entitled to the higher rate because of the provisions in Rule 25(f) of the Agreement which reads as follows:

"(f) When requirements of the service warrant the assignment of an unskilled employee exclusively in a steam power plant, such employee shall be classified as a laborer, a coal and ash man, or as a power plant helper, depending upon the requirements. If a laborer is used, his duties shall be confined to the unloading of fuel from cars, the loading of ashes or cinders into cars without the aid of mechanical devices, and general cleaning up around the plant."

Assuming that the Claimants are unloading fuel from cars and loading ashes or cinders into cars with the aid of mechanical devices (conveyor belts), what hourly rate should they be paid? It is axiomatic that this Board has no authority to create a rate. It is beyond its statutory authority to do so. Rates of pay may only be negotiated by the parties.

It is important to note that the hourly rate of pay for Coal and Ash Men - the rate requested for the Claimants by the Employees - appears in Appendix "A" of the Agreement as: "Coal and Ash Men & Chauffeurs (Brainerd)." Not only is an employee in that job classification required to unload fuel and load cinders or ashes, but he must also qualify and perform work of a chauffeur and even then this classification and hourly rate is valid and applies only to such employees at Brainerd. It does not apply to the 14th Street Power Plant in Chicago, Illinois.

This Carrier came into existence on March 3, 1970 after a merger of former Chicago, Burlington & Quincy Railroad Company, The Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast Railroad Company and the Spokane, Portland and Seattle Railway Company. The applicable Agreement in this case was executed on May 18, 1970 effective April 1, 1970. The job classifications and rates of pay in Appendix "A" represent an agreement on all of the job classifications and hourly rates that existed in the former railroads prior to the merger. Those in Appendix "A" of the current agreement represent the negotiated classifications and hourly rates to apply to the merged company. Many classifications and rates were eliminated. It is patently clear that the parties have agreed that the classification of "Coal and Ash Men & Chauffeur" applies only to employees at Brainerd and nowhere else on the merged railroad. No classification or rate of pay exists for "Coal and Ash Men."

Employees also argue that this claim should be sustained because the Carrier failed to reply to Employees' letter of October 25, 1971 within 60 days as prescribed in Article V of the August 21, 1954 Agreement.

The General Chairman's letter of October 25, 1971 is not a request for compensation to the Claimants. It merely asked the Carrier to make an investigation of "the proper rate for employees working as Laborers in the 14th Street Power Plant." Rule 27(a) provides that all "claims ... must be presented in writing by or on behalf of the employee involved". No employees are mentioned in the October 25, 1971 letter.

It is insufficient to contend that they could have been easily ascertained where the information was also readily available to the Employees. Furthermore, that letter is not in the form of a claim. It requests an investigation of an alleged condition. And it requests that the Laborers in the 14th Street Power Plant "be classified as Coal and Ash Men, and be paid accordingly". There is no "Coal and Ash Men" classification in the Agreement.

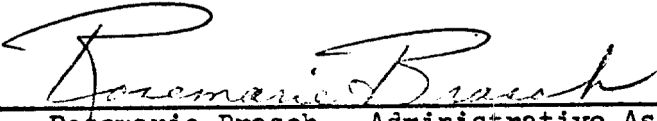
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of January, 1974.