

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

Parties to Dispute: ( System Federation No. 4, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Boilermakers)  
(  
( The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Current Agreement was violated on January 3, 4, 7, 21 and 22, 1974 when the Carrier assigned other than Boilermakers to remove the Spark Arrester Deflector Plates from the Smoke Stacks of the four (4) Boilers at Huntington Shop Power Plant, Huntington, West Virginia.
2. That accordingly the Carrier be ordered to compensate Boilermakers M. M. Ballengee, J. E. Humphreys, Robert Drummond, Chester Walker, Lloyd Black, S. D. Kitchen, C. L. Browning, Claude Cremeans, Charles Frazier & Glen Kitts by equally dividing one-hundred fifty two (152) hours between them at the applicable pro rata rate.

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 Carrier operates a four boiler Power House at Huntington, West Virginia. The Carrier assigned Maintenance of Way Forces to remove deflector plates from atop each of the four sheet steel smoke stacks at this Power House. Deterioration of the deflectors had necessitated either the replacement or removal of the deflectors from the smoke stacks, with the decision being made for removal. The Boilermakers' claim that the above-described work was Boilermakers' Work under the Agreement of the parties, and the Boilermakers' have thus progressed the instant claim to the Board.

Pursuant to Section 3 First (j) of the Railway Labor Act as Amended, the Brotherhood of Maintenance of Way Employes were duly notified of the pendency of this dispute before this Board: no submission was filed by that Organization.

The Carrier contends that the Employes have failed to properly identify the Claimants involved in the instant dispute in accordance with Rule 35 of the Agreement. We disagree. On the property the Carrier knew exactly who the Claimants were; and in the Statement of Claim to this Board, the ten Claimants are identified by name.

Concerning the merits of the dispute, it is the Carrier's position that the removal of the four deflector plates from the stacks did not violate Rule 79 of the Agreement: that deflector plates are not an integral part of the smoke stacks and, in fact, were not even replaced following their removal in this instance. The Carrier submits that work of removing deflector plates is not specifically defined in Rule 79. The Carrier contends that Maintenance of Way forces have traditionally and historically performed work of maintaining stacks beyond the tops of the buildings' roofs, such as involved in the instant case.

Rule 79, Classification of Work, of the Boilermakers' Special Rules, states in pertinent part:

"(c). . . laying out, building, repairing and fitting up any sheet iron or sheet steel of 16 guage or heavier, used in connection with work belonging to the trade; such as, . . . sheet steel stacks. . . ." (emphasis added).

We find that it is clear from the record that the materials involved meet the standard set out in Rule 79, that is sheet steel of 16 guage or heavier. We find further that deflector plates were part of the steel stacks. While the Carrier contends that the deflector plates were not an integral part of the stacks, and were not even replaced, we find that deflector plates were a part of the smoke stacks and had been a part of the smoke stacks since 1945. We find that when deterioration of the deflectors "necessitated" their removal (Carrier's Submission, page 2, lines 6, 7 and 8), then this removal, even though not replaced, constituted a repair to the sheet steel stacks as specifically set out in Rule 79.

Awards of this division have repeatedly held that a practice cannot overcome the definite and unambiguous provisions of a rule. We concur in this line of Awards, and conclude that the Carrier's contentions about a contrary practice cannot be controlling in this case, in view of the definite and unambiguous language of Rule 79.

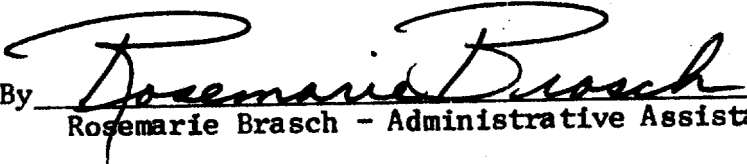
The record discloses a conflict in the total number of man hours spent removing the deflector plates from the four stacks. The Claim is sustained for the period of time spent by Maintenance of Way forces removing the deflector plates from the four stacks, at the applicable straight time rates. The Boilermakers have the burden of proof in all matters pertaining to the instant case, and we find that this Organization has not carried its burden of proof in regards to an agreement rule or a system-wide practice for the work of applying and removing of stagings at the four stacks.

A W A R D

Claim is sustained as per findings. It is directed that the claim be returned to the property solely for the purpose of determining the number of hours spent by Maintenance of Way forces performing the work of removing the deflector plates from the four stacks.

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 14th day of July, 1976.