

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11283
Docket No. 10964
2-DM&IR-EW-'87

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Duluth, Missabe & Iron Range Railway Company

Dispute: Claim of Employees:

1. That the Duluth, Missabe and Iron Range Railway (DM&IR) violated Rule 85 of the current Shopcraft Agreement and past practices when it stopped paying Electrical Crane Operators 15 minutes pay for oiling and greasing their cranes.

2. Accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to pay electrician Dave Rockwell fifteen additional minutes over and above his regular pay on May 1, 2, 8, 14 and 15, 1984, totaling one hour and fifteen minutes at electricians' rate and John Nelson the same 15 minutes pay for May 7, 8, 9, 11, 14, 15, 16 and 17, 1984, totaling two hours pay at the electricians' rate of pay.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This dispute results from differing interpretations of the meaning of Rule 85 of the Shopcraft Agreement which reads:

"Operators of overhead shop cranes will be allowed fifteen minutes per day at the straight time rate when required to oil cranes outside of and in addition to their regular eight hour assignment."

The Carrier argues that the Rule is clear on its face, hence past practice is irrelevant. The Organization states that the rule is ambiguous and that past practice must be utilized to ascertain its true meaning.

For many years the Carrier had paid the fifteen minutes in addition to the regular eight hours pay. A check of the Carrier's records showed that in the two years audited, 1973 and 1979, the Carrier had paid this amount on a daily basis.

In 1984 Carrier management sought to reverse this pattern of payment and made the unilateral interpretation that oiling must be done outside the regular shift hours in order to qualify for the additional 15 minutes pay. The Claim has been progressed to this Board.

Well established precedents are argued by both sides. If a rule is clear on its face, past practice is irrelevant, regardless of the length of time it has occurred. However, in the face of many years of practice, the meaning of the rule must be beyond doubt.

The Carrier argues that to interpret the rule as it has done for many years is to render meaningless the phrase ". . . outside of and in addition to their regular eight hour assignment." It argues that the Rule only makes sense if it relates to time, not pay. The Carrier cites the forerunner of the present rule as an aid in clarification. This is Rule 31(i) of the Carmen's Rule effective June 9, 1930. The Carmen had acknowledged jurisdiction of crane operation at that time. That Rule stated:

"(i) Crane operators in Car Department. . .
71¢ per hour. Crane operators and stationary engineers at the Car Shop when required to oil cranes or stationary engines on their own time will be allowed 15 minutes at straight time rate per day for this work."

There is no doubt concerning the meaning of this Rule.

The argument that the old rule controls the meaning of the new adds to the problem of interpretation. Why would the drafters of the newer rule not incorporate the clarity of the old rule if no change was intended? It will not suffice to claim that the old rule must determine the meaning of the new.

The difficulty comes in the intent of the words "eight hour assignment." It should be patently clear that the word "assignment" can relate to a function or to a time frame. The addition of the qualifying words "eight hour" does not help us in ascertaining the intent of the framers because it would be equally applicable to a time frame or a function.

Given the fact that the rule is not clear on its face, we are not free to interpret it and ignore past practice. We find that the interpretation given to the rule by the parties for many years must govern.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 1st day of July 1987.