

Award No. 195

Docket No. 192

2-MP-BM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.
(BOILERMAKERS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Shall W. M. Berry, boilermaker welder, North Little Rock roundhouse, be compensated at punitive time rate for service other than running repairs performed on the afternoon of November 26?

EMPLOYEES' STATEMENT OF FACTS: Mr. W. M. Berry is regularly assigned by bulletin to six days per week as boilermaker welder, North Little Rock, Arkansas, roundhouse. On afternoon of November 25, 1936, Boilermaker Welder W. M. Berry was instructed to report for duty the following day, Thanksgiving Day, November 26, 1936, to fill vacancy of Boiler Inspector Crone, regular seven day assigned boiler inspector. Mr. Berry performed the duties of boiler inspector 8:00 A. M. to 12:00 noon, November 26th, 1936. At 1:00 P. M., he was assigned by the officers in charge to perform certain welding in the fire box of Engine No. 1517. He continued on this job until 4:00 P. M. of that day. He was then required to return to boiler inspector work for balance of day, being compensated for the entire eight hour shift at pro rata rate.

POSITION OF EMPLOYEES: Employees claim that the carrier violated Rule 3 (b), which reads as follows:

"Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or Proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half, except that employees necessary to the operation of power houses, millwright gangs, heat-treating plants, train yards, running-repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays and men called to fill their places on such regular assignment, will be compensated on the same basis as on week days. Sunday and holiday work will be required only when essential to the continuous operation of the railroad."

The claim is that it was not necessary "for the continuous operation of the railroad," that Berry be called to do work on Thanksgiving Day; that the work done in the afternoon (welding) was not "runing-repair" work, which

from "running-repair work" and, therefore, was not the type of work which could be done under the circumstances here existing without payment of punitive rate for overtime.

The carrier's contention as to Rule 66 (b) is not sound. While the rule clearly gives the right to the carrier to assign a boiler inspector to welding, if there is no inspection work to be done, it cannot be argued reasonably that this rule was intended to be applied in a case where a boilermaker welder was called to substitute for an inspector on a holiday. Were we to hold in accordance with the contention of the carrier, it would nullify the rule requiring payment of the punitive rate for holiday work for boilermaker welder. Such employes could be assigned as inspectors and then assigned to welding work where there was insufficient inspection work to be done. Moreover, Rule 66 (b) must be read in light of Rule 3 (b). We hold that Rule 66 (b) cannot be construed so as to nullify the limitation contained in Rule 3 (b), and the requirement that holiday work not within Rule 3 (b) must be compensated for at the punitive rate.

Attention must be called to the apparent inconsistency in this decision when read in light of decision in Docket 189 (Award 193). The consistency in processing these two almost similar claims on different theories can be justified on the record only because the fact appears that in Docket 189 there was a man available for call, while in the instant case Berry was the only welder available at this point. The decision in each of the two cases is based upon finding that the work done was not essential to the continuous operation of the railroad. The inconsistency as between these claims is more apparent than real, each of them is based upon sound reason and from justifiable inferences arising under Rule 3 (b).

This Division recognizes the desirability of men and management agreeing on and announcing a uniform policy for processing claims of this character and then adhering to the same that there may be uniformity in the manner in which these claims are processed and presented. So apparent is the need for the adoption of the uniform policy with respect to these claims that no further discussion is desirable.

The claim of the employes must be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

That the carrier has violated its agreement with System Federation No. 2 by assigning the employe W. M. Berry to welding work on November 26, 1936, without paying the punitive rate therefor.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1937.