

Award No. 302

Docket No. 267

2-MP-BK-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BLACKSMITHS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That on February 7, 8, 9 and 10, 1938, A. B. Case, blacksmith, and F. M. Starr, blacksmith helper heater, Sedalia, Missouri, should be compensated \$1.01 per hour and 77¢ per hour, respectively, and not the punitive rate of 91¢ per hour and 67¢, which they drew. A. R. Young, blacksmith helper, was properly paid on those dates.

EMPLOYEES' STATEMENT OF FACTS: A. B. Case, blacksmith, regularly assigned 91¢ per hour, F. M. Starr, blacksmith helper, regularly assigned heater on heavy fire, 67¢ per hour, and A. R. Young, regularly assigned blacksmith helper with hammersmith and frame fire, 63¢ per hour, Sedalia blacksmith shop, were assigned on February 7, 8, 9, and 10, 1938, by the carrier to heating, shaping and straightening engine cast steel tank frame S. O. 2216. A. B. Case, blacksmith, and F. M. Starr, heater, were paid their regular assigned rates of 91¢ and 67¢, respectively, and were not paid in accordance with current wage agreement schedule where blacksmiths-hammer-smiths and frame fire rates are \$1.01, and blacksmith helper (furnace operators-heaters) for hammersmiths and frame fire rates are 77¢. A. R. Young, blacksmith helper with hammersmith and frame fire, was properly paid on those dates.

POSITION OF EMPLOYEES: We contend that A. B. Case and F. M. Starr were not properly compensated for services rendered the carrier on February 7, 8, 9 and 10, 1938; that the agreement between the Missouri Pacific Railroad Company and System Federation No. 2, Railway Employees' Department, A. F. of L., effective July 1, 1936, was violated, Rule 11 reading:

"Rule 11. When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

We further contend that the engine cast steel tank frame is a part of the locomotive, and without the tank frame the engine is incomplete. The tank frame is necessarily a part of the locomotive the same as the locomotive frame itself. Therefore, this brings our claim under our special Rules 88 (a) and 89 also, which establish the rates as given on pages 52 and 53, respectively, of current agreement. Blacksmiths-hammersmiths are covered by Rule 88 (a), and frames have always been recognized frame fire work, Rule 88 reading:

increase). There is no rule in the agreement covering the matter. The question is whether the term frame fire as used in the classification of wages applies to a locomotive tank frame.

The carrier contends that the term frame fire applies only to locomotive frames. The employes contend that the term frame fire as used is not limited and even if it were limited, the tank is a part of the locomotive. It is agreed that the original application of the term frame fire was to locomotives only. Numerous interpretations under Federal control, so held. The employes maintain, however, that when the classification of wages was made, the words frame fire were placed in the classification, without limitation, and that it must be presumed that no limitations were intended.

It is evident from the history of this question that the words frame fire were not intended to cover all kinds of frames, big and little. The original use of the term was plainly limited to locomotive frames and did not include tanks and trailers. There is no doubt that that was the understanding when the words were inserted into the classification of wages in the agreement between the carrier and the employes. It is an elementary principle of the law that the intention of the framers is to be given consideration when that intention is clear. In this case there seems to be little doubt that the intention was to apply the term frame fire to locomotive frames only. This conclusion is strengthened by the fact that the words do not appear in a rule defining the work, but in a classification of jobs and wages which must be held to be based upon the common understanding as to the application of the term used.

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 waived right of appearance at hearing thereon.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of February, 1939.