Award No. 303
Docket No. 278
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 EMPLOYES' DEPARTMENT, A. F. OF L. (BLACKSMITHS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That on March 2, 3, 4 and 7, 1938, J. F. Sharp, regular journeyman blacksmith, Vincent Banks, heater, and Frank Koerper, regular helper, Sedalia blacksmith shop, were not properly compensated for work performed by them. J. F. Sharp, blacksmith, should be compensated $1.01 per hour; Vincent Banks, heater, should be compensated 77¢ per hour; Frank Koerper, helper, should be compensated 63¢ per hour, and not the punitive rates of 86¢ per hour and 60¢ per hour and 60¢ per hour which they drew respectively.

EMPLOYES' STATEMENT OF FACTS: J. F. Sharp, regular journeyman blacksmith, 86¢ per hour, Vincent Banks, heater 60¢ per hour, and Frank Koerper, regular helper, 60¢ per hour, Sedalia blacksmith shop, were assigned on March 2, 3, 4 and 7, 1938, to heat, straighten, line up and repair engine 1456 and 5313 trailer frames. These men were required to perform blacksmiths-hammersmiths and frame fire work, and were not properly compensated for work performed. J. F. Sharp, blacksmith, Vincent Banks, heater, and Frank Koerper, regular helper, were only paid their regular assigned rates of 86¢ per hour, 60¢ per hour, and 60¢ per hour, respectively, and were not paid in accordance with current wage agreement schedule wherein blacksmiths-hammersmiths and frame fire rates are $1.01 per hour, and blacksmith helpers (furnace operators-heaters) for hammersmiths and frame fire rates are 77¢ per hour; blacksmith helpers with hammersmiths and frame fire rates are 63¢ per hour.

POSITION OF EMPLOYES: We contend that J. F. Sharp, Vincent Banks, and Frank Koerper were not properly compensated for services rendered the carrier on March 2, 3, 4 and 7, 1938; that the agreement between the Missouri Pacific Railroad Company and System Federation No. 2, Railway Employes' Department, A. F. of L., effective July 1, 1936, was violated.

> "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 trailer frame is a part of the locomotive and just as essential as the locomotive frame is to the engine itself, and

formed was not of the class that would require, under our schedule rules, they be paid the rate applicable for hammersmiths and frame fire workers and their helpers.

POSITION OF CARRIER: That rate of $1.01 for blacksmiths-hammersmiths and frame fire workers, and 77¢ for their helpers, applies only to the men operating the 2500 pound hammer and frame fire furnace; all work that is taken to this furnace or hammer is done by these differential men assigned to that job.

Our standard practice in the Sedalia shops is to place center in our tank or passenger car truck frame jaws and a center in the center plate of the truck and square up our frames from all points in order that the wheels may run parallel or true with the center of the truck. If any changes are to be made to square up this truck, a blacksmith uses a portable oil torch and heats the frame where necessary to square it up. In some cases it is necessary to pile a few bricks around to concentrate the heat on the frame, but this is not considered a furnace.

This work in no way whatsoever involves the work regularly assigned to the regular hammersmith or the hammersmith-frame fire.

There is no rule nor practice thereunder in our wage agreement to support the employes' claim and same should properly be denied by your Honorable Board.

OPINION OF THE DIVISION: The sole question to be determined in this docket is whether the work involved should be classed as frame fire. If it is so classed the employes' contention must be upheld. Otherwise, the claim of the employes must be dismissed. The claim is based upon the rates in the classification in the wage agreement between the carrier and the union wherein the rate for blacksmiths, hammersmiths and frame fire is fixed at 96¢ an hour (plus 5¢ an hour increase), and blacksmith helpers (furnace operators-heaters) for hammersmiths and frame fire 72¢ per hour (plus 5¢ an hour 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 trailer 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 trailer 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 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 were given due notice of 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.