

Award No. 304
Docket No. 309
2-SP-CM-'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. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES: That W. B. Kostakis be compensated for four hours at the straight time rate, because machinist performed work on August 27, 1937, which properly belonged to tender truckmen.

EMPLOYES' STATEMENT OF FACTS: On August 27, 1937, Engine No. 2774 was sent to the roundhouse for repairs; there being no regularly assigned tender truckman on that shift, a machinist was required to make the repairs; this was in violation of Rule 33 of the M.P.C. department agreement between the Southern Pacific Company and System Federation No. 114, A. F. of L.

POSITION OF EMPLOYES: For the last few years, the employes have taken the position that tender truckmen should be assigned on the second and third shifts in the roundhouse at Roseville; or that men from the assigned day shift should be called to do such work as develops on the other two shifts and paid under Rule 11. Rule 11 provides:

"Except as provided in paragraph (b) of this rule, employes required to report for work, who report and work, before or after their regular work period, will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes work or less, * * *"
Rule 33 provides:

"None but mechanics or apprentices classified as such, shall do mechanics' work as per the special rules of each craft, * * *"

Roseville is one of the largest points on the system for turning engines, because the main lines from the East and the North run through there and practically all engines are changed. At the present time there is only one tender truckman assigned, and he is on the day shift.

Mr. Kostakis, the tender truckman assigned on the day shift, only lives about five minutes walk from the roundhouse. On August 27, 1937, Engine No. 2774 was sent to the roundhouse for repairs. If Mr. Kostakis had been notified, he could have been there ready to go to work when the engine arrived, or, at that time of the day, he could have been sent for after the engine arrived and been on the ground in a very few minutes. The company takes the position that an emergency existed, which position they are taking with all such cases, but there is nothing in the agreement that provides that a machinist can do tender truck work, even if an emergency did exist, which

substantiated by the interpretations placed on National Agreement Rule 32 by Mr. Frank McManamy of the railroad administration. Said interpretations were published as official interpretations by Railway Employees' Department of the American Federation of Labor in 1920 (see carrier's Exhibit C). This rule has always been construed as applying at points and on shifts where there is not sufficient work to justify employing a mechanic of each craft. The mechanic or mechanics employed and on duty at such points, so far as capable, are privileged to perform the work of any craft to avoid delay to trains, and especially so when the work required can be performed by such mechanics on duty as in this case. Rule 32 of the National Agreement is as follows:

"ASSIGNMENT OF WORK

Rule 32. None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed."

It will be observed that the carrier's present Rule 33 and National Agreement Rule 32 are comparable.

The interpretation that we have placed on Rule 33, also evidence to sustain our contention that said rule was not applicable to the claimant, is found in carrier's Exhibit C, commencing with the third paragraph.

The carrier requests the Board to deny the claim.

OPINION OF THE DIVISION: This case involves the right of the carrier to use a machinist to perform work belonging within the jurisdiction of tender truckmen on a shift on which no tender truckman was employed. The facts are briefly that Tender Truckman Kostakis was assigned on the day shift at the Roseville roundhouse and his hours of service began at 8:00 A. M. Engine No. 2774 was sent to the roundhouse for repairs at 6:30 A. M. and, there being no tender truckman on the job, the damaged tender brake beam was repaired by a machinist.

The carrier contended that an emergency existed calling for the use of all available switch engines and that it was necessary to use every available engine every minute possible to avoid delay in make-up of trains. The necessary repairs were made by a machinist and the engine was returned to service at 7:10 A. M., an interval of forty minutes being required for the repairs.

The employees contend that Tender Truckman Koskakis should have been called and, inasmuch as he lived within five minutes' walk of the roundhouse, there would have been slight, if any, delay in the making of the repairs. The employees cite Rule 33, reading: "None but mechanics or apprentices classified as such, shall do mechanics' work as per special rules of each craft * * *" and claim this rule was violated when a machinist performed the work of a tender truckman.

The carrier places its argument primarily on the claim of an emergency. The employees claim that even an emergency would not authorize the performance of the work of one craft by members of another. Rule 33 reads:

"Rule 33. (a) None but mechanics or apprentices classified as such, shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. This rule does not prohibit foremen, in the exercise of their supervisory duties, from performing mechanics' work.

(b) At points (to be agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

This rule makes it clear that mechanics of each craft shall do the work of that craft and that others than mechanics of that craft shall not do it except as agreed upon and excepting foreman in certain instances. Machinists could not do the work of tender truckmen if tender truckmen were on the job. The question before the Division is whether a machinist may do the work of a tender truckman at a roundhouse where tender truckmen are employed, but on a shift on which tender truckmen are not employed. The answer must be that machinists could not normally do the work of tender truckmen at roundhouses where tender truckmen are employed even on shifts on which there are no tender truckmen, except as agreed upon, or in cases of plain emergency when the work could not be postponed, without serious interruption, or when tender truckmen could not be called. If machinists could perform the work of tender truckmen at points where tender truckmen are employed, but on a shift on which there were no tender truckmen, then it would be possible for machinists to absorb much, or all of the work belonging to tender truckmen, by the carrier merely requiring its performance on shifts on which there were no tender truckmen.

While the rules do not provide for an emergency, it must be accepted that if the operation of the railroad were to be hampered, because tender truckmen were not on the job, then the use of a machinist would be supported by the rules of equitable dealing. There must, however, be a real emergency not a fancied one. Even in case of a real emergency, a tender truckman, if available, should be given the work belonging to his craft.

In the present case, Tender Truckman Kostakis lived within five minutes' walk of the roundhouse and could have been called for the service and could have arrived in time to meet the emergency, which the facts indicated existed. The carrier should at least have given him the chance to respond to the call. If he could not reach the roundhouse in time, the emergency would have justified the use of a machinist. Inasmuch as no effort was made to call Kostakis, and give him the opportunity to respond, the performance of the work by a machinist constituted a violation of the rules.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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