

Award No. 357
Docket No. 329
2-CRI&P-CRI&G-FO-'39

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:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That John A. Anderson, stationary fireman at Estherville, Iowa, was laid off in violation of agreement and that he be restored to service with compensation for loss of time sustained by him.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 18, 1938, there were three continuous shifts of stationary firemen employed at Estherville, Iowa. One fireman was assigned to each eight hour shift. On April 18, 1938, Fireman Anderson was laid off and the two remaining shifts were then rearranged to work as follows:

1st shift. . . . 8:00 A. M. to 12 Noon & from 1:00 P. M. to 5:00 P. M.
2nd shift. . . . 8:00 P. M. to 12 Mid. & from 1:00 A. M. to 5:00 A. M.

This arrangement left the plant without a regular fireman in charge during the following intervals:

12 Noon to 1:00 P. M.	1 hour
5:00 P. M. to 8:00 P. M.	3 hours
12 Mid. to 1:00 A. M.	1 hour
5:00 A. M. to 8:00 A. M.	3 hours

The above making a total of eight hours during each twenty-four hour period when there was no fireman on duty. However, the carrier assigned shop laborers and one hostler helper to look after the boilers during these intervals. Paragraph "c" of Rule 1 of current power plant agreement provides:

"(c) The duties of the stationary fireman, where assigned, will include, while on duty, firing and operating boilers and the operation of all equipment in connection with the generation of steam; wheeling coal and cinders where no helpers or laborers are assigned; except powers plants where boiler capacity of 200 H. P. or over, are in operation, laborer will be provided to pull and wheel out ashes; the full

“(f) The duties of power plant helpers and laborers, where assigned, will include while on duty, the wheeling and passing of coal and cinders; the cleaning of boiler and engine room equipment; firing and operating the boilers in absence of the fireman; to assist the fireman in the performance of his duties; to help all other power plant employes on assignment by senior power plant employe.”

The use of laborers to watch the power plant fires during noon hour and between shifts of the two firemen was entirely proper according to the agreement and in accordance with past practice as recited in Statement of Facts, which conditions pertain at Estherville as well as at other points, and has been recognized as and is the proper application of the power plant agreement.

Mr. Anderson, being displaced April 19, 1938, had right to go back to position of laborer but he elected not to do so and worked at numerous times as a relief fireman taking the place of a fireman laying off. We called Mr. Anderson many times between April 19, 1938 and November 1, 1938, for laborer's work but he had another job as helper on tiling in Estherville and, at his request, we did not force him to take the laborer's position, but when the stationary fireman position was again restored on the third shift, November 22, 1938, he was assigned to same. Mr. Anderson is the junior of the three stationary firemen at Estherville and it was proper to displace him when the third shift assignment was cut off during the summer months, which practice has been recognized as proper in the past and is proper under the agreement now in force as herein quoted.

It will be noted that the claim is not specific, but in General Chairman Langhofer's letter of July 21, 1938, addressed to Mr. F. H. Frey, assistant to chief operating officer, he states:

“Prior to April 18, 1938, there were three shifts of stationary firemen at Estherville; after that date the third shift was abolished and the hours of the two remaining shifts were rearranged * * *”

It is assumed, therefore, that the complaint is account of the discontinuance of the third shift position during the summer months of 1938. Mr. Anderson, as indicated, was returned to service on the third shift on November 22, 1938, when that shift was again established for the winter months. He had worked as relief fireman during summer of 1938 and worked continuously as relief fireman from October 30 to November 21, 1938, in place of Messrs. Burkart and Schull who were off duty.

The carrier maintains there is no dispute as claim was not filed in accordance with Rule 12, Part II, shop and car department laborers' agreement of October 1, 1935. The discontinuance of the position and use of laborers for banking fires and laborers' work in the power plant is in accordance with the present working agreement and this proper application has been established by similar handling in years gone by during the period that the present rules have been in effect.

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.

Under Rule 1 of the agreement, the duties involved herein, which were assigned to laborers, were clearly the duties of a stationary fireman.

There is no justification in the rules for the action of the carrier in transferring these duties from the regular stationary fireman to a laborer.

AWARD

Claim sustained.

Fireman John A. Anderson shall be compensated for his loss of wages resulting from his furlough.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd Day of August, 1939.