

**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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Rule 38 was violated at Paducah back shop, Paducah, Kentucky, between dates of March 15, 1936, and July 31, 1937; and that Mr. Aubrey Harper be paid the difference in wage rates per hour (27¢), as exists between rate of laborer and acetylene generator attendant, between dates herein indicated.

EMPLOYEES' STATEMENT OF FACTS: Mr. Aubrey Harper was placed in charge of the oxygen line attached to feed stations in car yards for the purpose of oxyacetylene cutting in connection with the dismantling of freight cars. This consisted of attaching and removing oxygen tanks to the manifold and regulating the pressure, between the dates of March 15, 1936, and July 31, 1937, at Paducah shops. Part of this time Mr. Harper was also furnished an assistant.

The attaching and removing of oxygen tanks to manifolds and the regulation of pressures in feed lines to stations to which welding and cutting torches are attached are the regularly assigned duties of acetylene generator attendants in acetylene generator plants on the Illinois Central Railroad, in addition to the duties performed in the operation of acetylene gas generators and care of attached safety appliances.

Records of the months and fractions thereof and of the number of tanks handled by Mr. Harper are as outlined:

The record kept by the incumbent of the number of tanks handled per day and month between dates of March 15, 1936, and September 15, 1936, were destroyed by the Ohio River flood of January and February, 1937, and are not available.

September	15 to 30, inclusive,	1936.....	570 Tanks
October	1 to 31, "	1936.....	1420 "
November	2 to 30, "	1936.....	900 "
December	1 to 29, "	1936.....	120 "
January	4 to 20, "	1936.....	240 "

OHIO RIVER FLOOD * SHOPS INUNDATED.

March	1 to 31, inclusive,	1937.....	1580 Tanks
April	1 to 30, "	1937.....	1830 "
May	1 to 31, "	1937.....	1380 "
June	1 to 30, "	1937.....	850 "
July	1 to 31, "	1937.....	260 "

Our conclusions are—

1. The work in question is laborers' work.
2. The claim was not handled according to the provisions of Rules 11 and 13.
3. Mr. Harper was properly compensated for the work performed.
4. Employees have bargained away their right to present this claim.

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 employees 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.

Rule 38 reads as follows:

"An employe working on more than one class of work on any day, will be paid the higher rate for actual time worked on the minute basis. When temporarily assigned by the proper officials to a lower rated position, his rate of pay will not be reduced."

This case falls squarely within Rule 38.

Part of the work employe Aubrey Harper regularly performed was regular work assignable to the acetylene generator attendants' classification. While other employes may have a larger percentage of duties falling in the same classification, we cannot split duties so finely as to draw a line in a case such as this.

AWARD

Claim sustained.

Aubrey Harper shall be paid the difference in wage rates between the rate of laborer and acetylene generator attendant.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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