

Award No. 797
Docket No. 765
2-D&RGW-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, Freight Carmen Glasscock, Rauskauff, Porferio, Capra, Swartling, and others, assigned to operate the oxyacetylene tool in connection with cutting, burning or heating on freight carmen's work, shall be paid five (5) cents per hour above the prevailing freight carmen's rate or ninety-two (92) cents per hour.

Under the controlling agreement, that Passenger Carman F. G. Martin and others, assigned to operate the oxyacetylene tool in connection with cutting, burning or heating on passenger carmen's work, shall be paid five (5) cents per hour above the prevailing passenger carmen's rate or \$1.01 per hour.

EMPLOYEES' STATEMENT OF FACTS: Freight Carmen Glasscock, Rauskauff, Porferio, Capra, Swartling, and others, employed in the Burnham shops, when assigned to operate the oxyacetylene tool in connection with cutting, burning or heating on freight carmen's work, are paid the prevailing freight carmen's rate of 87¢ per hour.

Passenger Carman F. G. Martin, employed in the Burnham shops, when assigned to operate the oxyacetylene tool in connection with cutting, burning or heating on passenger carmen's work, is paid the prevailing passenger carmen's rate of 96¢ per hour.

Request of the organization that freight and passenger carmen be paid five (5) cents per hour differential when assigned to operate the oxyacetylene tool in connection with cutting, burning or heating, was denied by the management.

POSITION OF EMPLOYEES: Paragraph (a) of Rule 99 of the current agreement reads as follows:

"Oxyacetylene and Electric Welders will be paid a differential of five cents (5¢) per hour above the minimum rate in the department used and will be compensated under the provisions of Rule 14 (b)."

The five cents differential as outlined in the above rule is based on the operation of a tool, and the cutting and welding process is so closely related, if not identical, there should be no question as to whether or not the differ-

The preponderance of cutting at Burnham shops is performed by employes who are not welders and who have never served an apprenticeship. Two of the employes who perform the majority of cutting at Burnham were promoted from the ranks of carman helpers and this substantiates the carrier's position that no particular skill is required to perform this work, although the performance of such work carries the mechanic's rate, but not a differential.

It will be observed that Rule 99 (a) provides oxyacetylene and electric welders will be paid a differential of five cents per hour above the minimum rate in the department used. There is nothing in this rule which provides that a cutting torch operator will be paid a differential of five cents per hour above the minimum rate in department used. The rule is plain in its meaning and heretofore there has been no dispute with its application. If it was the intention to pay cutters the same differential as welders the rule would so state.

The carrier holds in this case that this request for a 5 cent per hour differential for operators of cutting torch is in effect a request for a new rule and is a question that should be handled through negotiations.

This is the first claim of record wherein request has been made that cutters be allowed a five cent per hour differential and this in itself is indicative of the fact that if cutters were entitled to a five cent differential, either a claim in connection therewith would have been presented long ago or the rule changed accordingly. The carrier contends if this claim is to be settled on the rules of the agreement on this property it should be denied.

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.

This dispute involves a question as to whether oxyacetylene cutters come under the provisions of Rule 99 (a) of the current agreement.

Rules 29 and 92 include both the cutting and welding processes; Rule 99 (a) provides method of payment.

AWARD

Oxyacetylene cutters should be paid the 5¢ differential in accordance with the provisions of Rule 99 (a).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of June, 1942.