

**Award No. 856**

**Docket No. 806**

**2-AA-MA-'42**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 77, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE ANN ARBOR RAILROAD COMPANY**

**(Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)**

**DISPUTE: CLAIM OF EMPLOYES:** (a) That the carrier violated the controlling agreement and Rule A-52 thereof by requiring on February 2, 1942, Machinist Clyde Perdun to work outside on engine No. 2259 when it was four degrees below zero.

(b) That Machinist Clyde Perdun be reimbursed the amount of his doctor bill and for all time lost due to illness from the unjustifiable below zero weather exposure.

**EMPLOYES' STATEMENT OF FACTS:** The main locomotive, car Shops and train terminal of the Ann Arbor Railroad is located at the point in dispute, Owosso, Michigan. Upon the arrival of freight trains in the Owosso train yard the operating officials have established the operations to be performed as follows:

The engine is removed from the train and taken to the water plug, coal dock and cinder pit to be serviced and made ready to continue with the train of cars that it was detached from upon its arrival. During this period of time the boilermakers, machinists and such other roundhouse employes necessary to make inspection, repairs and service the engine, are required to follow the engine to the water plug, coal dock and cinder pit in an effort to perform the work required of them. In so doing they carry their tools from one point of operation to the other, and all these services performed upon the engine are within five or six lengths of the engine from the roundhouse. During some part of the servicing movement of the engine it passes within twenty feet of the roundhouse.

On date of February 2, 1942, Engine No. 2259 arrived at the cinder pit at 7:25 P. M. and departed at 9:10 P. M. Roundhouse Machinist Clyde Perdun was instructed by the roundhouse foreman to go outside and perform the necessary work on Engine No. 2259 when the temperature was four degrees below zero. Mr. Perdun performed the following work: lubricating the machinery, testing air, cleaning sand pipes that were frozen, keyed up back end of main rods, repacked engine trucks, thawed out cab heater, and squirt pipe, and testing and inspecting other parts of locomotive as required by the Interstate Commerce Commission regulations. The required time to perform the work was one hour and fifteen minutes.

The roundhouse has twelve stalls and pits, and from 7:25 P. M. to 9:10 P. M. Number 4, 5, and 6 stalls were vacant and in good serviceable condi-

**POSITION OF CARRIER:** The alleged dispute set forth in the petitioner's ex parte statement of claim is not properly before or subject to a decision by the National Railroad Adjustment Board, Second Division, for the following reasons:

1. The alleged dispute referred to herein involves a request to change the rules of the agreement effective July 1, 1921, covering employes represented by Ann Arbor System Federation No. 77.

2. The alleged dispute referred to herein has not been handled with the carrier in the manner provided by Section 3 (i) of the Railway Labor Act as amended June 21, 1934.

In view of these facts, the adjudication of the alleged dispute referred to herein does not fall within the province of the Board, and, accordingly, this case should be dismissed for lack of jurisdiction.

Subject to and without waiving the foregoing exceptions, the carrier makes the following statement:

The alleged dispute set up by the petitioner in his ex parte statement of claim is without basis under the rules of the agreement covering employes represented by Ann Arbor System Federation No. 77, and, therefore, the contention of the committee should be dismissed and the claim denied.

In the event this case is set down for hearing by the Board, the carrier requests reasonable advance notice of the date of such hearing, and reserves the right, upon being furnished a copy of the petitioner's ex parte submission, to present evidence and argument in answer thereto.

**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.

There was sufficient evidence presented as rebuttal testimony during the course of the hearing of this dispute to show that severe or inclement weather existed at the point and time involved, February 2, 1942.

The carrier has admitted there were three unoccupied stalls in the enginehouse.

That the carrier violated the provisions of Rule A-52 must be sustained. However, the request that the claimant be reimbursed the amount expended for medical service and compensation for time lost due to illness is not sustained.

#### AWARD

Claim (a) sustained.

Claim (b) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1942.