

Award No. 1072

Docket No. 990

2-CCC&StL-BM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 54, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)**

**THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY
(THE NEW YORK CENTRAL RAILROAD COMPANY,
LESSEE)**

DISPUTE: CLAIM OF EMPLOYES: 1—That the carrier violated the controlling agreement—

(a) When A. P. Ferguson was reduced from a regular assigned differential flange fire helper to the assignment of a regular boilermaker helper, during the period of May 4, to June 4, 1942.

(b) When R. E. O'Nan was reduced from a regular assigned differential flange fire helper to the assignment of a regular boilermaker helper, on and subsequent to June 4, 1942.

2—That the carrier be ordered to—

(a) Restore the differential flange fire helper's rate effective as of May 4, 1942.

(b) Reimburse A. P. Ferguson the difference between what he received and the amount he would have earned at the applicable flange fire helper's rate, for the period of May 4, to June 4, 1942.

(c) Restore R. E. O'Nan to the flange fire and reimburse him the difference between what he has received and the amount he would have received at the applicable flange fire helper's rate, retroactive to June 4, 1942.

EMPLOYEES' STATEMENT OF FACTS: At Beech Grove shops, Indiana, prior to November, 1937, and through the years to May 4, 1942, the carrier maintained in the boiler shop a flange fire gang of one boilermaker and two boilermaker helpers.

The boilermaker flanger and his two helpers were paid a differential rate of five cents per hour continuously, regardless of whether they worked continuously on the flange fire or part time at other work.

With regard to (b), Helper O'Nan subsequent to his removal from the position of assigned flange fire helper, effective June 4, 1942, worked regularly without any special assignment until he later placed himself by bid on a regular assignment. During the time he held no regular assignment he was used for the extra work on the flange fire with very few exceptions. It might be explained in this latter connection that O'Nan let it be known he preferred not to take the extra flange fire work when he was satisfactorily employed on other piece work operations.

In the handling of this case the employees cited June 24, July 31, August 3, 4, 7, and 26, September 8, 11, and 23, 1942 as specific dates on which O'Nan was available but had not been given the extra helper's work on the flange fire. The carrier's records as reflected on the time cards, pro-rate sheets and pay rolls show the following conditions to have prevailed on the dates mentioned:

A second helper was not used on the flange fire June 24; August 7; September 8, 11, and 23. O'Nan himself was used on August 26, and other helpers were used July 31; August 3 and 4. On the latter three days O'Nan working on other piece work operations, averaged \$1.091, \$1.107 and \$1.06 per hour, respectively, which, in view of his expressed wishes, no doubt accounts for his not being used on the flange fire on the three days in question. In support of the data set forth in this paragraph the carrier submits and makes part hereof its Exhibit No. 4 containing a tabulation of the hours worked and pay received by O'Nan, and the hours worked on the flange fire by a second helper other than O'Nan on the dates mentioned in the employees' submission.

Carrier's Exhibit No. 4 clearly shows the charges of discrimination on six of the days enumerated to be unfounded. On the other three dates, considering the use of O'Nan on flange work would have necessitated his removal from equally lucrative employment, the charge of discrimination assumes rather a ludicrous aspect.

CONCLUSIONS:

(a)—The evidence shows that two helpers are needed on the flange fire during less than 20 per cent of the total shop hours worked, which evidence the employees have not denied and cannot contradict.

(b)—Authoritative rulings in respect of the application of rules cited by the employees show conclusively that said rules do not support the employees' claim or argument.

(c)—The employees have otherwise failed to support their contentions.

(d)—There was no discrimination against Helper O'Nan and carrier emphatically denies the implications in connection therewith.

(e)—There is no showing that O'Nan or any other helper actually lost compensation as a result of discontinuance of one flange fire helper position, in view of which no injury can be claimed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The carrier was in error in having deprived Helper Ferguson of the flange fire helper's work, May 4, to June 4, 1942, and that part of the claim will have to be sustained.

In regard to the second part of the claim, Rule 81 provides "sufficient competent help will be furnished on flange fires." It was the duty of the carrier to furnish sufficient competent help. This does not mean that any certain number of helpers must be assigned, only, sufficient help to perform the work.

The record is in conflict as to whether or not sufficient competent help was assigned. This case will be remanded back to the parties to ascertain the facts and for settlement in accordance with this award.

AWARD

Claim insofar as Fergason is concerned is sustained.

Claim insofar as O'Nan is concerned is remanded to the parties to ascertain the facts and for settlement in accordance with this award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1945.