

Award No. 1357

Docket No. 1267

2-C&O-FO-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

THE CHESAPEAKE & OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That there is no authority in the current agreement for the substitution of employes from the craft of electrical workers for stationary firemen, as occurred in the Power Plant at Peach Creek, W. Va., on May 10, 1948.

2—That accordingly the carrier be ordered to additionally compensate second shift Stationary Fireman Jesse J. Evans and third shift Stationary Fireman Andrew Nixon, the difference between the laborer's rate received and the stationary fireman's rate, which they were entitled to earn, retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: At Peach Creek, West Virginia, the carrier maintains in the power plant three hand-fired 250 horse power stationary boilers; one electric air compressor; one steam air compressor; one electric generator and a charging panel; two water pumps for supplying the boilers with water, and adjacent to the power plant, two water pumps in the boiler washing plant.

Until May 10, 1948, the carrier employed stationary firemen around the clock: one on the 7 A.M. to 3 P.M., one on the 3 P.M. to 11 P.M. and one on the 11 P.M. to 7 A.M. shifts. However, on May 10, 1948, the carrier terminated the services, as stationary firemen, of Jesse J. Evans on the second shift and Andrew Nixon on the third shift. Concurrently therewith, the carrier assigned other power plant employes in the craft of electrical workers to perform the duties of these cutoff stationary firemen, although maintaining the stationary fireman on the first shift.

The agreement of September 30, 1938, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the scope provisions of Rule 1 of the above mentioned controlling agreement includes stationary firemen on the property of the carrier at the point involved in this dispute and that there is nothing contained anywhere in said agreement which confers upon the carrier the unilateral authority to substitute employes of the craft of electrical workers, subject to another agreement, for these claimant stationary firemen as occurred on May 10, 1948. It is indisputable that the carrier has assigned employes in this power plant on the second and third shifts, covered under another agreement and represented by the electrical workers'

(3) That there is no agreement rule that will support claim in this case for pay for services not rendered; and requests that the claim of the employes 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.

The Scope Rule of the parties' agreement, so far as her material, provides:

"(a) These rules govern the hours of service and working conditions of employes under the jurisdiction of the Maintenance of Equipment Department of The Chesapeake and Ohio Railway only (not including the Hocking Division); namely,

1. Stationary Engineers (Steam),
 2. Stationary Firemen (Steam),
- * * * * *

The Scope Rule, by naming positions, embraces all work which such employes usually and customarily performed at the time of the negotiation and execution of the agreement.

It has been the usual and customary practice on this carrier, and was such at the time the parties' agreement became effective, when only a stationary engineer, either steam or, steam and electric, is in attendance at a small boiler room or power plant to have him, in addition to performing his duties as engineer, perform all of the duties of a fireman relating thereto until the total amount of such work becomes more than he can do. When that stage is reached a stationary fireman is employed to take care of the fireman's duties. However, when the amount of work again reduces itself to where the engineer in attendance can perform it all, then it has been customary and the usual practice to have him do it. The Scope Rule of the parties' agreement is subject to this practice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23d day of January, 1950.