

Award No. 2273

Docket No. 2042

2-EJ&E-BM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 88, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier unilaterally reassigned work regularly assigned to the Boilermakers' Craft on September 6, 1954, in violation of the controlling agreement.
2. That accordingly the carrier be ordered to compensate Boilermaker J. Minzing and Boilermaker Helper J. J. Bates in the amount of eight (8) hours at the applicable overtime rate for September 6, 1954.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker J. Minzing and Boilermaker Helper J. J. Bates, hereinafter referred to as the claimants, are regularly assigned by bulletin to roundhouse positions at Joliet, Monday through Friday, 8:00 A. M. to 4:00 P. M.

On September 3, at about 3:00 P. M. the roundhouse foreman orally informed the claimants that their services would not be required on Monday, September 6, 1954. No other notice was posted or given to the claimants.

On September 6, 1954, machinists were instructed to open hatches, remove angle iron, apply angle iron and close hatches on Locomotive 479. On the same date sheet metal workers were instructed to drain and refill Diesel Locomotive 479.

The claimants were not permitted to fill their regularly assigned positions and were available for assignment on this date.

The dispute has been handled up to and with the highest designated officer of the company who has declined adjustment.

The agreement of April 3, 1922, reissued June 15, 1950, and a supplementary agreement hereinafter cited are controlling.

therefore, the burden of defending the claim upon its merits has never shifted to the carrier.

2. The carrier is **not** required by **agreement** to separate from any work assignment of one or more crafts small, insignificant, incidental functions and place a boilermaker **and his helper** on the job just to perform those incidental functions.

3. The work of draining and filling diesel locomotive radiators, setting and removing safety railings, opening and closing locomotive hatches, and removing and replacing the angle iron braces is not designated as boilermaker's work in Boilermakers' Special Rule No. 67.

4. The practice in effect on carrier's property for many years does not support the organization's claim that this work has been recognized as boilermaker's work.

In view of this, the carrier respectfully submits that a denial award should be made.

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 claim is based on the contention that carrier improperly assigned work to others on Monday, Labor Day, September 6, 1954 which it had regularly assigned to the Boilermakers Craft. In view thereof, the organization asks that Boilermaker J. Minzing and Boilermaker Helper J. J. Bates be compensated for 8 hours of pay for that day at the applicable overtime rate.

Claimants were regularly assigned by bulletin to their respective positions at carrier's roundhouse, East Joliet, Illinois. The work week of their positions was Monday through Friday, 8:00 A. M. to 4:00 P. M., with Saturday and Sundays as rest days.

On Friday, September 3, 1954, at about 3:00 P. M., the roundhouse foreman orally informed claimants their services would not be needed on Monday, Labor Day, September 6, 1954. On Saturday, September 4, 1954, the officials of carrier's Maintenance of Equipment Department directed that diesel locomotive No. 479 be held in the roundhouse at East Joliet on Monday, September 6, 1954, to tighten its cylinder heads and water jacket. This locomotive was of a switcher type. Classified repairs thereto had been completed about August 10, 1954. On September 4, 1954, when it was decided to have this work done, it had been in switching service for about three weeks since such repairs were made.

The tightening of the water jacket was work belonging to sheet metal workers and assigned to employes of that class; whereas, the work of tightening the cylinder heads belonged to machinists and was assigned to employes of that class. In performing this work on this locomotive these employes installed and removed safety railings thereon; opened and closed the top hatches hereof; removed and replaced angle iron braces; and drained and re-filled the radiator (tank) thereof with water. This type of work, when it existed during the claimants 40 hour work week, was assigned to and performed by them. The claim is based on the performance thereof by machinists and sheet metal workers

The foregoing work is not specifically set forth in Rule 67 of the parties' effective agreement setting forth the classification of boilermakers work and, if it can be said to be covered thereby at all, it must come within the following language thereof: "and all other work generally recognized as boilermakers work." We have said of similar language in our Award 1373 that: "This rule (language) embraces all work which carmen helpers (here boilermakers) usually and customarily performed at the time of the negotiation and execution of the agreement but subject to past practice." And in Award 1554 that: "This language is subject to the principle that carrier can continue to have work covered thereby performed in the same manner as it was customary to have it done at the time the agreement, of which the rule is a part, became effective. That is, such language does not abrogate past practices."

We do not think, from the facts disclosed by the record, that boilermakers and their helpers generally had the exclusive right to the type of work here involved. We also think it was incident to the main work which belonged to the machinists and sheet metal workers, whom carrier had perform it. But that is not necessarily decisive of the question here as, during their 40 hour work week, Carrier had all the work of the type here in question performed by claimants.

In our Award 1825 we laid down two principles applicable here. They are as follows:

"Work normally incident to a position may ordinarily be performed by the occupant thereof but when, from Monday through Friday, it has been assigned to and performed by employes of another class or craft the work belongs to that class or craft on rest days and does not flow back to the position on such rest days so as to permit the occupant of the position to perform it.

When work is not the exclusive right of any one class or craft carrier may have the employes of any class or craft perform it who have a right thereto. However, if carrier assigns it to employes of one craft or class from Monday to Friday that class or craft has the right to the same work if performed on Saturdays and Sundays and carrier cannot assign it on those days to another class or craft."

Applying those principles here, we think the following flows therefrom; when carrier assigned all of this type of work to these claimants (boilermakers) during the hours of their tour of duty during their work week, here Monday through Friday, that the class or craft to which they belonged had the right thereto if performed during the hours of their shift on a holiday, particularly when such holiday falls on a day of their work week, and that carrier cannot properly assign it to employes of another class or craft under such conditions.

The claim here made is for both the boilermaker and his helper. The work performed was neither difficult nor extensive and could easily have been performed by the helper. Time for work lost is the pro rata rate of the position which, for holidays, is time and one half. In view thereof we deny the claim made on behalf of Boilermaker J. Minzing but sustain that made in behalf of Boilermaker Helper J. J. Bates.

AWARD

Claim in behalf of Boilermaker J. Minzing denied.

Claim in behalf of Boilermaker Helper J. J. Bates for eight hours at time and one half sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.