Award No. 2802
Docket No. 2651
2-B&M-BM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT AFL-CIO (Boilermakers)

BOSTON & MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the carrier assigned machinist to:

(a) Renew the firepot and do related work on Locomotive 1931.

(b) Remove fourteen (14) doors, by removing 126 5/16 bolts from the hinges, from the housing over the engine on Locomotive 1226 on Saturday, October 8, 1955.

2. That accordingly the carrier be ordered to compensate Boilermaker S. A. White eight (8) hours pay at time and one-half rate on October 8, 1955.

EMPLOYES' STATEMENT OF FACTS: The Boston & Maine Railroad, hereinafter referred to as the carrier, operates an enginehouse at East Deerfield, Massachusetts, 7 days per week, three shifts each day.

Boilermaker S. A. White, hereinafter referred to as the claimant, is assigned to the first shift, Monday through Friday, with rest days Saturdays and Sundays. Boilermaker R. Parent is assigned to the third shift, Monday through Friday, with rest days Saturdays and Sundays.

The items of work involved in this dispute as set forth in part 1 of the "Dispute: Claim of Employes", are assigned to and performed by the boilermakers during their regular tour of duty, Monday through Friday.

The carrier accepted and applied the jurisdictional dispute settlement dated September 10, 1951, which gives to the boilermakers the work of removing and applying the housing or hood over the engine and working parts of the Diesel Locomotive.

question the applying of side sheets in constructing a cab and their removal and reapplication in making repairs thereto, fall within the language used. But the removal of the 30" by 20" side sheet here involved does not come within its meaning. It was placed there in order to expedite the making of inspections and repairs to the machinery behind it. It was held in place by screws which were readily removable to accomplish that purpose. It is no more the exclusive work of a boilermaker than if a hinged door or other similar means of entry to the machinery had been provided. **The work of removing and reapplying** the 30" by 20" sheet **is incident to the work of the mechanic required to perform work on the machinery behind it.** We think this is a reasonable interpretation of the rules and, consequently, one that we are required to give to it." (Emphasis added.)

Therefore, in view of the foregoing, on the basis that this was a bona fide emergency, and on the basis that this was a condition whereby a machinist was merely removing doors to gain access to his own work, there cannot be any justification for claim by the boilermakers on the basis that this is exclusively boilermaker work. The carrier requests that your Honorable Board deny this claim in its entirety.

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 confronting claim is brought in behalf of Boilermaker S. A. White for eight (8) hours' pay at the punitive rate on the grounds that the carrier acted in contravention of Rules 26 and 60, as well as the jurisdictional dispute agreement between the boilermakers and the machinists bearing date of September 10, 1951.

This claim has two facets, namely, (a) renew the firepot and do related work on Locomotive 1531, and (b) remove fourteen (14) doors by removing 126 5/16 bolts from the hinges, from housing over engine on Locomotive 1226. Both phases of the work described above form the basis of these claims, and were performed by employes (machinists) not covered by the effective agreement on October 8, 1955.

Part (a) of the above claim is properly boilermakers' work. This the carrier admits. It is asserted that the work was assigned to a machinist because of an emergency. We are of the opinion that the facts of record do not support the carrier's contention that an emergency (as this Board has defined the term) existed. Part (a) of the claim is valid.

Thus we proceed to part (b) of the claim. As noted above, this phase of the dispute concerned the removal of fourteen (14) doors by removing 126 5/16 bolts from the hinges and from the housing over engine.

The carrier asserts that no rule of the agreement was violated when a machinist rather than a boilermaker performed this last mentioned task for the reason that machinists have historically and by long custom and practice removed those parts of a locomotive required to be removed to gain access to related work.

We are of the opinion that Rules 26 and 60 of the effective agreement, as well as the jurisdictional dispute agreement between the machinists and the boilermakers, delegated the work to the employes covered by the effective agreement in plain and unambiguous terms. It is noted that the aforementioned dispute agreement made specific reference to

> "* * * the repairing, removing and applying of the housing or hood over engine * * *."

Having found that the above mentioned rules and agreement are without ambiguity, it follows that they (rules) prevail over any contrary custom and practice. Thus, the work involved in part (b) of this claim belonged to employes covered by the agreement and was not susceptible of assignment and performance by other employes not covered by the agreement. We have held without exception that work encompassed by the Scope of an agreement cannot properly be removed therefrom and assigned to employes not covered thereby.

Award 1790 is clearly distinguishable. Here we have a classification of work rule. There was no such rule in the agreement upon which Award 1790 was based.

Part (b) of the above claim is likewise valid.

It is noted that this claim is brought seeking reparations at the punitive rate. A preponderant number of awards of this Division hold that the proper penalty rate for time not worked is the pro rata rate rather than the punitive rate. No work was performed. This claim is valid only at the pro rata rate.

AWARD

Claims sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1958.