Award No. 3164
Docket No. 3007
2-DS-TWUOA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA—Railroad Division

DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

Claim concerns Bruno Palinski, Car Repairman II and is as follows: It is requested that I be paid the difference between Repairman I and Repairman II, July 19, July 15 and July 16. On these dates I heated rivets on Cars DS 475, DS 595 and DS 568. It has been a past practice that First Class Car Repairman only will heat rivets. Claim known as Car Shop Claim No. 72-57.

EMPLOYES' STATEMENT OF FACTS: Bruno Palinski is a carman second class and is an employe of the Donora Southern Railroad Company.

That on June 19, July 15 and July 16 he heated rivets on cars DS 475, DS 595 and DS 568.

That it has always been the practice of first class repairmen to heat rivets until this instant claim.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective August 29, 1949 and revised September 1, 1955 with the Donora Southern Railroad Company, covering the Maintenance of Equipment Employes, a copy of which is on file with the Board and by reference hereto, made a part of the statement of facts.

POSITION OF EMPLOYES: That the heating of rivets has always been done by first class car repairmen and since this practice has been in effect until this instant claim, that the carrier be required to follow out the practice that the carrier has had on their property and use first class car repairmen to heat rivets on cars.

Since Bruno Palinski is a second class repairman but was used as a first class car repairman when he heated rivets, that he be compensated the difference in pay between second class repairman and first class car repairman.

For the foregoing reasons, it is respectfully submitted that this claim must 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.

Parties to said dispute were given due notice of hearing thereon.

Here a second class repairman who was used to heat rivets, claims that he should be paid first class repairman's rate because the practice has been to use only first class repairmen for this detail.

The employes' position acknowledges there is no scope rule in the governing agreement and the submission does not cite a classification of work rule.

The argument advanced by our labor confrere to the effect that practices should not be changed except after negotiation has been most eloquent and well prepared. However, to accept the argument would lead us to the erroneous conclusion that negotiation is the only way to change a practice.

Actually, practices vary from day to day to meet changing conditions; especially the details vary, and are unclear. Parties frequently are in disagreement when practice is called upon as evidence.

Award No. 1070 of this Division remanding a docket to determine what practice existed as to the payment made for painting a wrecking derrick, was handed down in a situation where there were two set rates for different specific painting jobs, but with no rate set for the hybrid in-between job of wrecker painting. Those facts differ from the instant case because here there has been no rate fixed for rivet heating.

In the absence of a rule violation showing, we are not permitted to effectuate a new rule by formalizing a practice into an award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3164

We submit the majority failed to recognize the pertinent facts evidenced in the record that the work in question had been assigned to Car Repairman II prior to this instant case. Therefore we cannot agree the carrier has the right or authority to unilaterally change a rate of pay that has been accepted by both parties over a period of years.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner