

Award No. 3165
Docket No. 3008
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
A. F. of L.-C. I. O. Railroad Division

DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

Claim concerns George Suman, Car Repairman first class and is known as Car Shop Claim No. 75-57. Claim as follows: It is requested that I be paid eight (8) hours at the time and one half rate for B. Palinski heating rivets on Cars DS 595 and DS 568 on July 15, 1957. Past practice has been for first class repairmen only to heat rivets.

EMPLOYEES' STATEMENT OF FACTS: George Suman is a carman first class and is an employee of the Donora Southern Railroad Company.

That on July 15, 1957, B. Palinski, a second class car repairman heated rivets on cars DS 595 and DS 568.

That the practice has been to always use first class car repairmen to heat rivets and that George Suman should have been used to do this work.

That the carrier violated a practice by allowing a second class car repairman to do work that has always been done by first class car repairmen.

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 employees, a copy of which is on file with the Board and by reference hereto made a part of the statement of facts.

POSITION OF EMPLOYEES: That the heating of rivets has always been done by first class car repairmen on the property of the carrier and that

was used to heat rivets; and that under an alleged practice on this carrier, the work of heating rivets should have been assigned to a car repairman first class. Except as above stated, the instant claim involves the identical facts set forth in Car Shop Claim No. 72-57 in behalf of B. Palinski, the car repairman who was used to heat the rivets on the date in question, which claim was submitted to this division by the organization, together with the instant claim. The carrier's statement of facts, as set forth in carrier's ex parte submission in Car Shop Claim No. 72-57 are made a part of this ex parte submission by reference.

POSITION OF CARRIER: It will be noted that the claimant is seeking a day's pay at time and one-half rate. Even assuming a violation, which is expressly denied, it has been established that for work not performed, the penalty is paid at pro rata and not at overtime rate.

With respect to the merits of the instant claim, the carrier stands on the position of carrier as set forth in its ex parte submission in Car Shop Claim No. 72-57, which position is made a part of this submission by reference thereto.

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 employees 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.

Our reasoning in Award No. 3164, deciding Docket No. 3007, is on identical facts and rules as in this case. It controls our decision here.

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. 3165

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