Award No. 3935
Docket No. 3700
2-GM&O-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'

DEPARTMENT, A. F. of L.-C. I. O. (Carmen)
GULF, MOBILE & OHIO RAILROAD COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman-Burner-Welder E. E. Fortner was improperly compensated for performing Boilermaker's work on tank of GM&O tank cars Nos. 25666 and 25661 on February 18, 19, 20, 23, 24, 25, 26, 27, and March 2, 1959.

2. That accordingly the Carrier be ordered to additionally compensate Carman-Burner-Welder Fortner in the amount of 4.4 cents per hour for eight hours on each of said dates.

EMPLOYES' STATEMENT OF FACTS: Carman-Burner-Welder E. E. Fortner, hereinafter referred to as the claimant, is employed by the Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, at Mobile, Alabama.

Approximately 12 months ago all boilermakers in the Mobile Terminal area were furloughed. Since that time, including the period February 18 through March 2, 1959, carmen have been assigned to perform the boilermakers' work.

The current rate for boilermakers performing welding and burning is $2.596 per hour. The rate for freight carmen performing welding and burning is $2.552.

This dispute has been handled with all carrier officials up to and including the highest officer so designated to handle, with the result that he has declined to adjust it.

The agreement effective January, 1941, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that when freight carmen are assigned to perform the work of boilermakers or other

RULE 15 OF THE CURRENT AGREEMENT IS NOT APPLICABLE

The claimant relies on Rule 15 of the current agreement. For ready reference, this rule reads as follows:

> "When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate, but if required to fill, temporarily, the place of another employe receiving a lower rate, his rate will not be changed."

As pointed out above, claimant was employed as a carman-burner-welder and in such capacity was welding leaks in tank cars. In performing such duties, he was not required to fill the place of another employe.

Rule 15 of the current agreement has been in prior agreements since 1921 and throughout these years carmen have performed the duties of boilermakers, as well as the duties of other crafts, at points where all crafts are not employed. In performing these duties, carmen were not considered as filling the place of another employe and did not receive the higher rate of the craft whose work he happened to be performing. In other words, throughout the years Rule 15 has not been applicable where carmen perform the duties of another craft at points where there is not sufficient work to justify employing a mechanic of each craft.

CONCLUSION

When carmen-burner-welders do welding on tank cars, the agreement does not contemplate that they will be paid an additional differential over and above the differential paid to carmen-burner-welders. The claimant was not required to fill the place of a boilermaker because no boilermakers are employed at Mobile.

The claim is not supported by the agreement, past practice or sound reasoning and should 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.

The work done by Claimant is Boilermakers' work under the Agreement, but for about a year before the event in question there have been no Boilermakers in the Mobile Terminal, and since that time their work has been performed there by Carman-Burner-Welders, under Article VII of the Chicago Agreement of August 21, 1954, which reads as follows:

> "At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

Prior to that time, beginning as of December 1, 1921, the Agreement had provided:

"At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that will be necessary."

The claim is that for doing this work Claimant should receive the 4.4 cents per hour differential between his own rate and that of a boilermaker doing identical work under Rule 15, which has been in effect since 1921, and appears in the Agreement as follows:

"(15) Filling Vacancies:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate, but if required to fill, temporarily, the place of another employe receiving a lower rate, his rate will not be changed."

The Employes' argument is that while performing the work of higher rated employes Claimant was filling the place of a higher rated employe, within the intent of the rule.

The Carrier contends that Rule 15 relates only to the filling of definite vacancies, that throughout the long existence of the two rules mechanics at Union City and many other points have been doing such work and that no claim has heretofore been made under Rule 15 for the higher rate.

In their rebuttal the Employes admit the absence of prior like claims, but state that it "is due to the improper policing of the agreement" and "carelessness in making out his time sheet." A practice of 38 years is of too long standing to be explained away as carelessness or improper policing. While long established practice cannot alter a clear rule, it can evidence the mutual recognition of a clear one or a mutually accepted interpretation of an ambiguous one.

"Place" means "position," and "another" means "one other,"—"some different person or thing." Webster's New Collegiate Dictionary. Consequently, "to fill the place of another employe" means to occupy the definite position of some other individual employe. It might perhaps be argued that the language was loosely used and was intended to refer to the kind of work done by a certain class of employe, and not merely to the specific position of a definite employe. But that is not possible, since apparently, as originally adopted, the rule contained the title "Filling Vacancies," which relates to definite positions rather than to kind of work. Consequently its meaning, as originally adopted, was not ambiguous; which presumably explains the lack of prior claims and the absence of any established practice contrary to literal meaning.

This Board, like the parties, must accept the rule as adopted by them and as mutually accepted by them through so many years.

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 January, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 3935

Apparently the majority accepts verbatim the carrier's contention that ". . . Rule 15 relates only to the filling of definite vacancies . . ." However, Rule 15 requires that an employe assigned to fill the place of a higher rated employe shall be paid the higher rate, regardless of the period of time. The evidence in this record does not disclose a mutual agreement or interpretation which would permit holding that Rule 15 has not been violated. The rate schedule provides that the current rate for performing the instant work is $2.596 per hour and the claimant is entitled to that rate as claimed.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink