Award No. 4083

Docket No. 3835

2-CB&Q-BM-'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. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. — C. I. O. (BOILERMAKERS)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement rules, other than Boilermakers were improperly assigned at the Havelock, Nebraska Shop to make and assemble a steel rack fabricated of material consisting of I-beams fastened together to form a rack to support machinery when removed from tracks or cars.

2. That accordingly the Carrier be ordered to compensate Boilermaker E. Loos and Boilermaker Helper J. Stake, four (4) hours pay each at straight time rate for March 25, 1959.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, maintains a shop at Havelock, Nebraska, and employs Boilermaker E. Loos and Boilermaker Helper J. Stake, hereinafter referred to as the claimants, to perform, among other things, the work involved in this dispute.

On March 25, 1959, the carrier assigned maintenance of way employes to enter the shop, use shop facilities and materials, and fabricate from I-beams, channel irons and angle irons a rack or track device for handling Kershaw Ballast Regulators to and from the track.

This dispute was handled in the regular manner prescribed by the agreement, and on July 21, 1959 was appealed to Mr. W. E. Angier, Staff Officer, Personnel Department.

After some discussion and conference the time limit was waived pending further investigation and discussion.

The general chairman after investigating the facts wrote Mr. Angier under date of October 15, 1959.

who made the machine. Ballast regulators purchased later from the same company did come equipped with set-off tracks.

In handling this claim on the property the general chairman disputed the fact that shop craft employes had performed the welding on these set-off tracks. However, no proof was offered that the work equipment operators had welded the materials together. The fact of the matter is that they are not qualified welders, and could not have performed this permanent work on the set-off tracks. There was no other way to get this material welded except by sending it to the pool welders, who are shop craft employes authorized by the agreement to perform welding in all crafts.

It must be recognized that the only work complained of in this docket was the spacing and measuring of the I-beams and channel irons used for these set-off tracks, plus the experimental operation of the machine on the I-beams to determine if the design was proper. The actual making of the set-offs was performed by the shop craft forces who welded the materials together.

The claimants did not suffer a loss of work, either as individuals or to the detriment of their craft, by reason of the designing of these set-offs by the work equipment operators. As individuals they were working full time and paid eight hours for March 25, 1959. Since the welding did go to the shop craft forces, it cannot be alleged the craft suffered any loss to the maintenance of way employes, of work belonging under the agreement with System Federation No. 95.

In conclusion, the carrier asserts the claim cannot be supported because:

1. Designing these set-off tracks was work not related to boilermakers' work in any manner, and not within Rule 50 of the agreement with System Federation No. 95.

2. This was a task related to the operation of these machines, and was properly assigned to the work equipment operators who were present in the shop under the special agreement (Carrier's Exhibit No. 1).

3. Since the welding was performed by a pool welder, an employe in the shop crafts, no loss or detriment was suffered by Petitioning Organization or the claimants.

In view of this evidence, the 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.

The shop in question is a work equipment shop where track machines used in right-of-way maintenance are repaired by Boilermakers, Sheet Metal

workers and others. There is a special Memorandum of Agreement permitting the operators of such machines who were in the service on October 1, 1940, to assist in making such shop repairs during the winter period from November 1 to May 1, provided no mechanics of the crafts concerned are then laid off at those points.

The Memorandum of Agreement indicates a recognition that except as therein provided the work mentioned in each craft's classification of work rule belongs to its members at the shop involved.

The work in question comes within Rule 50, the Boilermakers' Classification of Work rule. It does not constitute repairs, but modifications of machinery, which the manufacturer of the equipment has now adopted as standard. Claim 1 should therefore be sustained.

The record does not show that these claimants sustained pecuniary damage because of the violation. It shows that they worked full time on that day, and does not indicate that overtime would have been necessary or that the claimants would have been entitled to such overtime. Claim 2 should therefore be denied.

AWARD

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.

OPINION OF LABOR MEMBERS CONCURRING IN PART AND DISSENTING IN PART TO AWARD NO. 4083

We concur in the finding of the majority that "the work in question comes within Rule 50, the Boilermakers' Classification of Work Rule," but we dissent from the finding that "The record does not show that these claimants sustained pecuniary damage because of the violation. . . ." It is impossible to reconcile the holding of the majority that the agreement was violated with the holding that no pecuniary damage was sustained because of the violation.

The work in question by collective bargaining agreement belongs to the boilermakers' craft and not subject to be performed by any other craft or class of employes. The fact that the named claimants worked on the day specified in the claim is of no importance. The cold facts are that the employes of the boilermakers' craft were deprived of their contractual right to perform the work, and the claim on behalf of any individual or individuals is only incidental thereto.

Second Division Award No. 3405 and other awards of this Division determined that for violation of contract provisions the claimants (on duty) be compensated at the pro rata rate of the craft or class to which the work is

assigned by agreement. The same remedial treatment should have applied in the instant case.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink