

Award No. 4743

Docket No. 4616

2-GN-FO-'65

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. 101, RAILWAY EMPLOYES'

DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That employes of the Firemen and Oilers craft were improperly deprived of the work of operating the Oil Refinol Oil Plant when the Carrier closed the Oil Refinol Plant at Havre, Montana and contracted the refining of used diesel crankcase oil to Motor Oils Refining Oil Company, Lyons, Illinois.

2. That accordingly, the Carrier be ordered to pay Claimants Ray E. Brown, Paul Verploegen, Raymond Sievert and Orville Shore, the hourly difference in rates of pay as between Diesel Shop Laborer and Oil Refinol Plant Operator, 19.3c per hour, eight hours per day, five days a week, and William Bates for eight hours one day per week, all retroactive to September 25, 1962 and continuing until such time as these men are properly restored to their former positions as Oil Refinol Plant Operators.

EMPLOYEES' STATEMENT OF FACTS:

Ray E. Brown, Paul Verploegen, Raymond Sievert, Orville Shore and William Bates, hereinafter referred to as the claimants, have seniority dates as Laborers at the Havre, Montana diesel shop of the Great Northern Railway Company, hereinafter referred to as the carrier, as follows:

Ray E. Brown, November 29, 1950; Paul Verploegen, December 16, 1951; Raymond Sievert October 21, 1952; Orville Shore November 10, 1952 and William Bates June 21, 1956. These men were employed in the Oil Refinol Plant as of the following dates: Raymond E. Brown August 11, 1951, Paul Verploegen April 17, 1952, Raymond Sievert May 26, 1954 and Orville Shore May 10, 1958. Each of these men was assigned a position working five days per week in this plant and they continued on such positions, with the plant in continuous 24 hour per day operation until September 25, 1962 when the plant was closed down and the claimants were furloughed as Oil Refinol plant operators. They then exercised their laborer seniority in the diesel shop to work as laborers. The date Claimant

guage in a collective bargaining agreement.

2. The organization bears the burden of proving that it has secured the exclusive right to re-refine oil by showing some clear and unambiguous contractual language to that effect.

3. The organization has cited no language in the Agreement to support its contentions.

For the foregoing reasons, the carrier respectfully requests that the claim of the employees 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 waived right of appearance at hearing thereon.

The claim is that the Claimants, with seniority as railway shop laborers represented by the Organization, were improperly deprived of work when the Oil Refinol Plant at Havre, Montana was closed, and the re-refining of used diesel crankcase oil was contracted out.

The Oil Refinol Plant positions are not mentioned in the Agreement, but the Employes' contention is that the use of shop laborers there ever since its establishment in 1949 has brought them within the Agreement.

The employment of shop laborers in the Oil Refinol positions was by unilateral action of the Carrier, and no attempt was made to negotiate them within coverage by the Schedule Agreement. The only negotiations by System Federation No. 101 shown in the record concerning them was its request in 1955 for a separate seniority roster and higher pay for those positions. The Carrier expressed its willingness to set up a seniority roster for them, but its unwillingness to increase their pay, the only higher pay for such positions being in the Refinol Plant at the Dale Street Shops in St. Paul, which was being closed. The System Federation then withdrew its request because on June, 1955, the Machinists had raised a jurisdictional dispute with the Firemen and Oilers concerning their representation rights. Thus, even at Havre, the positions were not then recognized by all employes as Firemen and Oilers' work.

The record shows that the same has been true elsewhere in the System. Re-refining operations were initiated in the Dale Street Shops during World War II. By unilateral action the Carrier used boilermaker helpers in that work at

slightly above the helpers' rate. The first negotiation with any organization concerning these positions was upon the request by the President of System Federation No. 101 that they be considered as coming within the boilermakers' jurisdiction and bulletined to boilermaker helpers. The Carrier expressed a willingness to choose such operators from among boilermakers helpers, but declined to have them listed in the classification of work rules of boilermakers helpers, or to have them subject to bulletin or seniority provisions.

Reconsideration was requested for the reason that "all crafts comprising System Federation #101 have agreed that this work be classified as boilermaker helpers' work ***." It was denied by the Carrier because (1) the work was not considered as actually boilermakers' work; (2) the use of a boilermaker helper for Refinol Plant work was in effect only at the Dale Street Shops and was purely fortuitous; and (3) Refinol Plants on all other railroads contacted in the territory were operated by Stores Department employees, and it might be desirable to install such a plant within the Carrier's Stores Department.

In 1951 the General Chairmen of the International Brotherhood of Electrical Workers and of the I.A.M. had a conference with the Carrier's management concerning a Refinol Plant employee with an electrician helper's seniority, and another with a machinist helper's seniority. In 1951 the General Chairman of the I.A.M. requested a conference with management concerning the Refinol Plant positions at Havre, which apparently was never held.

In the "Miami Agreement" of February 13, 1958, the Brotherhoods agreed that this was properly Firemen and Oilers' work, but the System Federation has not attempted to negotiate such coverage, and it has not been adopted by the parties to this claim.

In this state of the record the Board cannot find that the Refinol Plant operators' positions have been generally recognized on Carrier's system as work coming within the Firemen and Oilers' Agreement under System Federation No. 101, or that it is work belonging exclusively to shop laborers covered by that Agreement. The claim must therefore be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.