



Award No. 4926
Docket No. 4772
2-NYNH&H-BM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Boilermakers)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Current Agreement was violated between May 28, 1963 and June 12, 1963 when the Carrier assigned two (2) Laborers to repair the Stationary Boilers in the Central Heating Plant at South Boston, Massachusetts.

2. That accordingly, the Carrier be ordered to compensate Boilermakers — W. King, L. Mission and J. Foster, fifty (50) hours each at the applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven & Hartford R.R. Co. hereinafter referred to as the carrier, operates the Central Heating Plant to provide steam for the enginehouse and car yards (Dover Street) at South Boston, Massachusetts. The maintenance work is performed by the carriers' employees.

The boilermakers' seniority district includes all of the carrier's facilities at South Boston, Massachusetts.

Boilermakers W. King, L. Mission & J. Foster, hereinafter referred to as the claimants, are regularly assigned on the 1st shift in the Enginehouse with rest days Saturday & Sunday.

In the spring of each year the carrier assigns two (2) boilermaker positions to repair the boilers in the Boston Heating Plants.

This dispute has been handled with all carrier officials designated to handle such disputes, including the highest designated officer of the carrier, with the result that they have all declined to make satisfactory adjustment. The agreement effective September 1, 1949 as subsequently amended is controlling.

In view of the foregoing, the carrier respectfully submits that a denial award should be made.

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 waived right of appearance at hearing thereon.

It is the contention of the Claimants herein that between May 28, 1963, and June 12, 1963, the Carrier assigned two laborers to repair Stationary Boilers in the Central Heating Plant at South Boston, Massachusetts in violation of Rules 29 and 69 of the effective Agreement, Rule 69 being the Classification of Work Rule for Boilermakers.

It is not denied by the Carrier that laborers were assigned at that station to perform Boilermakers' work. It is Carrier's position that, at the end of each heating season, it is necessary that the boilers at the Central Heating Plant be cleaned prior to inspection by the Massachusetts Department of Public Safety; that in years prior to 1963 the cleaning had been accomplished by a recall of Boilermakers furloughed from other points or by transfer of employes stationed at other points, there being no employes of the Boilermakers' craft regularly employed at the Central Heating Plant; that in 1963 both the furloughed employes were canvassed and the various Boilermaker Craft Organizations in Boston were contacted but without avail. Carrier, further, contends that the General Chairman admitted the inability to furnish the men needed and that the General Mechanical Superintendent of the Carrier understood that the General Chairman agreed to the use of laborers as promoted Boilermaker Helpers though Carrier concedes that the Local Chairman Mission, one of the Claimants, took exception to it but offered no other solution to the problem; that after the two laborers were put to work, the Local Chairman and two others were named as the Claimants in the Statement of Claim; that two vacancies had been advertised by bulletin and no bids received; that on June 7, 1963, contact was finally made with one Boilermaker Helper who agreed to commence work and replace one of the laborers and on June 10, 1963, another man was agreed upon who replaced the other laborer.

The Petitioner's original Submission was brief and based entirely on mere assertions that Carrier had employed Laborers to perform Boilermakers' work, citing Rule 29 and Rule 69 of the Agreement, attaching two bulletins as exhibits to demonstrate the Carrier recognized this was boilermakers' work. In the Rebuttal Submission of the Petitioner new matter was introduced with exhibits attached which will not be considered here as it was not discussed on the property.

It would appear from the Record that the Carrier in good faith made an effort to get this work done by the Boilermakers' Craft; that neither the Carrier nor the Organization could procure Craftsmen from any source; that there was at least a tentative understanding with the General Chairman that

Laborers could be used on this job; that though the Local Chairman objected he offered no other solution to the problem; that an emergency existed due to the requirement that the boilers be cleaned prior to inspection by the Massachusetts Department of Public Safety; that the Laborers were displaced as soon as competent men were found who were available. From all of these circumstances it would appear that if there was a violation of the Agreement, at most it was a technical violation.

Furthermore, it appears that all the employees named in the Statement of Claim were gainfully employed throughout the period claimed, were deprived of no work and suffered no monetary loss. What they are asking for here is in the nature of a penalty for which there is no provision in their Agreement.

Under all these circumstances the Claim will not be allowed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1966.