

Award No. 5059

Docket No. 4905

2-L&N-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That under the current agreement, Rule 1 (b), "Shop Laborers" and the historical background, Shop Laborers S. Shanklin, J. Madry and T. S. McDaniel, South Louisville Shops, should be additionally compensated for four (4) hours and thirty (30) minutes each at time and one-half (1½) rate of pay on account of Machinists A. L. Mooney, B. Wilson, G. Parker, J. Sweeney, J. Boyd, R. Hawkins and E. Kolb, Machinist Helper H. Ubank and Departmental Foreman J. Stephens, performing General Shop Cleaning of accumulated debris on May 8, 1964.

EMPLOYEES' STATEMENT OF FACTS: On May 8, 1964, the carrier ordered the aforementioned employees of the machinists craft to stop performing their assigned work as machinists at 1:00 P. M. and then assigned them to work at regularly assigned laborer work of cleaning accumulated rubbish and debris at which they were continuously occupied until 2:30 P. M.

The facts of this case are, that over the years the carrier has gradually reduced the number of laborers to the extent that when an emergency arises (or a fancied one) such as the excuse offered in this case:

"On account of a critical inspection that was scheduled —"

Also, Chief Mechanical Officer, Mr. C. A. Love, uses still another excuse:

"The only change made in the usual practice followed for many years, was to have the Machinists start cleaning their machines up a little earlier than they ordinarily do, to prevent the possibility of overlooking the regular Friday Clean-up and inspection."
(Emphasis ours.)

It is the practice on this carrier's property for mechanics in the air brake shop, the battery shop, the wheel shop, the injector shop, the machine shop, the tool shop, the paint shop and the various tool cribs, to regularly clean machines, motors, etc., and handle materials. As an example, electricians keep motors clean and crane operators (when overhead operated) sweep their cabs and walk runways on the cranes.

All shop cleaning is not the exclusive right of shop laborers. The Firemen and Oilers' Agreement which became effective June 1, 1942, did not change the practice or custom of having the mechanics clean up around their work areas. By custom, brooms and mops are part of the shop laborer's tools of employment, but bench brushes are used by mechanics and not laborers. In the instant case brooms were used as well as bench brushes for cleaning of benches, around the machines, etc.

There was nothing unusual about the mechanics performing these duties. Good housekeeping is a prerequisite of the good workman, and orderliness in the performance of duty is a criterion of the safe, conscientious workman. Safety requires good housekeeping, and the work performed was only an incidental part of the assignment of the mechanics.

It is clear that this is nothing more than a penalty claim, but such is not provided for by the agreement. In this connection, attention is invited to Second Division Award 3672, wherein it was held:

"In the absence of a rule in the agreement which would support the penalty claims, they will have to be denied."

There are many awards of the board that support carrier's position, among them being Second Division Award No. 2377. In that case, in denying the claim, the board said:

". . . It is only when the Carrier pursues an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform that a basis for claim exists. . . ."

In conclusion, carrier submits it has shown there is no basis for the claim and, therefore, respectfully requests that it 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 notice of hearing thereon.

Shop laborers did not have to be called to do the clean-up work where the mechanics should and did clean up their own work area and their own machines.

AWARD

Claim of the employes denied.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of March, 1967.