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Award No. 5347
Docket No. 5136
2-IC-BK-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Blacksmiths)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement between the dates of December 18, 1964 and February 23, 1965, the Carrier improperly assigned Blacksmith Helper C. Davis to perform Blacksmiths' work consisting of operating the normalizing furnace.

2. That accordingly the Carrier be ordered to compensate

Blacksmith J. Doychak – 8 hours on December 18, 1964
Blacksmith V. Baro – 8 hours on December 29, 1964
Blacksmith J. Doychak – 8 hours on January 26, 1965
Blacksmith V. Baro – 8 hours on January 28, 1965
Blacksmith V. Baro – 8 hours on February 19, 1965
Blacksmith J. Doychak – 8 hours on February 23, 1965,

for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Illinois Central Railroad, hereinafter referred to as the Carrier, maintains a large passenger car shop at Burnside, 95th and Cottage Grove, Chicago, Illinois, for the repairing of cars, including a Blacksmith Shop, to perform the work of the Blacksmith Craft, covered by Rule 97 of the controlling agreement.

Blacksmiths J. Doychak and V. Baro, hereinafter referred to as Claimants, are regularly employed by Carrier as such in its Burnside Shop, and regularly assigned to the first shift Monday through Friday, Saturday and Sunday rest days. The Claimants are assigned to the regular routine of blacksmiths' work, including the operating of a large furnace in normalizing parts and material worked in the shop.

On December 18 and 29, 1964, January 26 and 28, February 19 and 23, 1965, Carrier assigned Blacksmith Helper C. Davis to operate the large furnace and normalize parts and material worked in the shop.

required of a journeyman-blacksmith-mechanic. We have pointed out that our action was occasioned when blacksmiths on the Burnside Shop roster were absorbed on other work and could not be diverted. By so showing, we have demonstrated our good faith in adhering to the proposition that blacksmiths **may** be used to operate furnaces, but blacksmith helpers **may also** be used to operate furnaces.

Furthermore, the Company has shown that the agreement was not violated. While the Blacksmith Classification of Work Rule does in fact include "operating furnaces" as a part of blacksmiths' work, it does not supersede or render superfluous Rules 99, 103 and 106, which separately and collectively contemplate that work with furnaces may also be a part of helpers' work. In this way, too, we have adhered to the proposition that blacksmiths **may** be used to operate furnaces, but blacksmith helpers **may also** be used, especially on a manually operated normalizing furnace.

Thirdly, the Company has shown that the World War II agreement, which the Union feels was binding, does not contemplate the case where helpers are simply used part-time on work that is not a part of any particular assignment. The framers of the August 20, 1945 Agreement had in mind promotions of helpers on vacancies requiring mechanics' skills, not practices already permissible under the parties' schedule of rules. Therefore, that much of the Union's argument at least is irrelevant in coming to a decision on the merits of this case.

Finally, we have shown that even had the agreement been violated, the monetary claim could not be sustained. If we had thought the blacksmiths alone were entitled to the work, we would have scheduled their work differently. As it was, they were under pay at the time of the alleged violation and did not suffer any monetary or work loss as the result of what was done.

The Division should therefore sustain the Company's position by denying the union's claim.

Oral hearing is waived unless the Brotherhood should request otherwise. In the usual manner we reserve the right to answer the Union's ex parte submission, of course.

(Exhibits not reproduced.)

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.

This Division has held in numerous Awards that a journeyman is the master of his craft, and may be assigned to perform any and all work of his craft. Helpers are employes who assist journeymen and who otherwise

perform duties incident to journeymen work. They are limited by Agreement to the kind of work that they may perform. Rules 99 and 103 prescribe the work upon which helpers may be used. These rules do not authorize the assignment of a helper to tend a normalizing furnace.

It is admitted by the Carrier that Helper Davis was assigned to full time duty tending the normalizing furnace on the claim dates because the "only two journeymen blacksmiths on the roster . . . were absorbed on other work."

Carrier apparently agrees with the Employes that tending the normalizing furnace is properly the work of a journeyman Blacksmith; otherwise, why would the Carrier have paid Davis the journeyman's rate? It is admitted that the Carrier "upgraded helper Davis and paid him the journeyman's Blacksmith rate on the days in question." Carrier clearly violated the agreement.

There being a contract violation, the Board has the obligation of formulating a remedy. There is no showing that any journeymen Blacksmiths, other than the Claimants, were available on the dates in question. And, the Claimants were fully occupied at their regular assignments. They, obviously, could not have performed both assignments simultaneously. There is no showing that the tending of the normalizing furnace could have been performed when Claimants had completed their regular work. If there was evidence in the record that this work could have been done after Claimants' normal working hours, it is probable that damages could have been assessed on that basis.

It may be argued that the proper penalty would be the rate stipulated for a call. But, the fact is that the Carrier upgraded Helper Davis on the days in question and paid him the journeyman's rate. For the purpose of this agreement he performed the work of a journeyman, and was considered to be such while at this job. Perhaps the Carrier did not upgrade Davis strictly in accordance with the provisions of the August 20, 1945 Agreement. But the work had to be done immediately. There was no time to follow the procedure. The fact is that Davis was upgraded in accordance with that Agreement shortly thereafter. Under the circumstances in this case there is no basis for the assessment of liquidated damages. Claimants suffered no monetary loss.

AWARD

Item 1 of the claim is sustained.

Item 2 of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1968.

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