Award No. 5890
Docket No. 5840
2-LI-FO-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 156,
RAILWAY EMPLOYES' DEPARTMENT, A.F.L.-C.I.O.
(FIREMEN & OILERS)**

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: Claim of Employes:

1. That the Long Island Railroad violated the current Firemen & Oiler's Agreement and the seniority and service rights of the Stationary Engineers when they improperly assigned newly employed Laborers to perform the Stationary Engineers' duties and work of operating Power Car No. 92100 at their Richmond Hill Yards from 3:00 P.M. January 27, 1968 to 3:00 P.M. February 7, 1968.

2. And, That accordingly each of the following Stationary Engineers be additionally compensated at the rate of eight (8) hours at the time and one-half rate for each of the dates indicated from January 27, 1968 to February 7, 1968:

1	C. McDonough	1-27-68, 1-30-68, 2-2-68, 2-4-68
	P. H. Mitchell	1-28-68, 1-30-68, 2-2-68, 2-5-68
	A. Taormina	1-28-68, 1-31-68, 2-2-68, 2-5-68
	G. Foster	1-28-68, 1-31-68, 2-3-68, 2-5-68
	F. C. Verderber	1-29-68, 1-31-68, 2-3-68, 2-6-68
	J. F. Hammersley	1-29-68, 2- 1-68, 2-3-68, 2-6-68
	J. F. Pavilanis	1-29-68, 2- 1-68, 2-4-68, 2-6-68
	G. M. Russell	1-30-68, 2- 1-68, 2-4-68

EMPLOYES' STATEMENT OF FACTS: The Long Island Railroad, ıereinafter referred to as the carrier, maintains and operates permanently :stablished Power Plants at Morris Park, Long Island City and Richmond Hill Passenger Yards whereat they employ and assign the aforenamed quali-ied, licensed stationary engineers, holding seniority as such, hereinafter eferred to as the claimants.

In January of 1968, the carrier leased from the Reading Company what s known and identified as power car no. 92100, assembled and equipped as . complete self-contained portable steam generating plant. Power car no. 2100 is equipped with three (3) steam generators, connected to a common eader with a combined heating surface of 513 square feet, a working pressure f 300 lbs. per square inch, and a combined steam generating capacity of

Thus, it is obvious that the agreement has not been violated and the claim should be denied on its lack of merit—i.e., lack of contractual support.

IV

In order that the issues will not be confused carrier respectfully calls the Board's attention to the following language:

> "This claim was received in this office on November 11, 1968, which normally would be too late to be considered for discussion at our meeting on the 14th. However, carrier waived the usual time requirements in this case and discussed the matter with you."

We have advised the employes (and your board) they have violated the time limits provided in Rule 32, as amended. Carrier has not waived these violations nor should the foregoing paragraph be so construed.

It will be noted that the employes filed appeal with carrier's director of personnel relations under date of November 3, 1968. This letter was not received by carrier until November 11, 1968. Carrier's regular monthly meeting with the employes was scheduled for November 14, 1968. That meeting was held and the appeal was discussed with the employe's representative despite the fact that the carrier had only three days in which to investigate the matter. Under ordinary circumstances the consideration of that appeal would have been held over until the next scheduled meeting with the employes but, as a courtesy, carrier discussed the claim with the employes on November 14 though we had had only three days to consider the matter.

These are the time limits referred to in the foregoing quoted paragraph. Not, as we are sure the employes will allege, the time limits set out in Rule 32, as amended.

V

In the foregoing carrier has clearly demonstrated that the claim of the employes should be dismissed and/or denied because:

1. The employes violated the time limits set out in Rule 32, as amended.
2. The claimants were fully employed and lost nothing.
3. The agreement does not support the employes claim.

Carrier affirmatively states that all matters contained herein have been submitted in substance to the Employes or discussed in conferences with the employes on the property.

We respectfully request this board to sustain the position of the carrier.

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 dispute arose as a result of Carrier using laborers to operate a portable steam generating plant identified as Power Car No. 92100.

Carrier has raised a procedural defect in regard to Claimants' failure to make timely appeal from the denial decision of Carrier's Chief Mechanical Officer as well as failure to notify said Chief Mechanical Officer that Claimants were rejecting his said denial decision, all within the prescribed time limits set forth in Rule 32 of the Agreement governing the parties to this dispute. In regard to the contention, Carrier points out that Claimants had sixty (60) days to notify Mr. F. A. Danahy, Carrier's Chief Mechanical Officer, that his denial decision of July 12, 1968 was rejected and would be appealed further, and second, file notice of appeal to Carrier's highest officer designated to hear said appeals, in this instance Carrier's Director of Personnel Relations; that Claimants waited until 101 days had passed before making the appeal to Carrier's highest officer and therefore this claim should be dismissed.

The pertinent provisions of Rule 32, as amended, provide as follows:

"* * * * *

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any state of the handling of a claim or grievance on the properly, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose. * * * * *."

The record discloses that this claim was filed on February 24, 1968 with Carrier's Plant Engineer, Mr. R. J. Crotty and denied by him by letter dated April 17, 1968, and in turn Mr. Crotty's decision was appealed by the Organization to Carrier's Chief Mechanical Officer, Mr. Frank A. Danahy by letter dated June 8, 1968. Further, by letter dated July 12, 1968, Mr. Danahy in response to the Organization's appeal letter to him of June 8, 1968, denied the claim after stating reasons therefor; and on October 21, 1968, the Organization's John Wasloski by letter dated October 21, 1968 addressed to said Chief Mechanical Officer, Mr. Danahy, referred to their discussion of these time claims on September 24, 1968 and asked Mr. Danahy for a reply after considering said claims; that on October 28, 1968 by letter Mr. Danahy repled to Mr. Wasloski's letter of October 28, 1968 advising that his position hadn't changed and that the original denial sent to him would remain; that on November 3, 1968, Mr. Wasloski, by letter replied to Mr. Danahy informing him that his decision would be appealed and on the same date, by letter the Organization appealed said denial to Mr. A. T. Van Wart, Director of Personnel Relations.

Mr. Van Wart, by letter dated November 18, 1968, to Mr. J. J. Wasloski, the Organization's International Representative, acknowledged receipt of Mr. Wasloski's letter of November 18, 1968 and went on to say:

"* * * * *

"This claim was received in this office on November 11, 1968, which normally would be too late to be considered for discussion at our meeting on the 14th. However, Carrier waived the usual time requirements in this case and discussed the matter with you.

After considerable discussion, it was agreed that a decision in this case would be deferred until Carrier had sufficient time to investigate the matter."

It is thus clearly seen that Carrier by the explicit statement of its Director of Personnel Relations, Mr. A. R. Van Wart, waived any procedural defect in regard to the timely filing of said appeal within the 60-day time limit, and we are thus compelled to deny Carrier's contention in this regard.

Concerning the merits of the dispute, the Organization's position is that the duties of operation of the Power Car in question are the same as the duties in operating permanent Power Plants and which require the same knowledge and skills as of Claimants herein; that subsequently to laborers performing the work on the dates in question, Carrier assigned the Claimant Stationary Engineers to operate this Power Car thus establishing the work as belonging to Claimants; that a permit in the State of New Jersey requires that only licensed engineers may operate said units.

Carrier's defenses to this claim are: (1) the claim should be denied inasmuch as the Claimants were fully employed and suffered no loss; (2) the claim should be denied due to lack of contractual support in that the work does not exclusively accrue to the Claimants herein.

In its initial submission to this Board, Carrier alludes to the fact that prior to the time it became an Agency of the State of New York licensed stationary engineers were required by law for the operation of stationary boilers, but when Carrier became a State Agency these requirements were no longer required. However, it is the opinion of the Board that the work involved herein of operating Steam Power Car No. 92100, leased from the Reading Railroad Company, is work belonging to Claimants herein. There is no dispute that said portable Steam Power Car was used by Carrier as a stationary power plant in supplementing the Richmond Hill Heating Plant. Therefore, stationary engineers, not laborers, should have been used by Carrier to operate said steam car. Carrier eventually came to this same conclusion when it ceased using laborers after having used them for approximately 10 days. Further, although New York does not require stationary engineers to operate said units as here in question, New Jersey still does, thus indicating the necessity of having skilled stationary engineers perform the work in dispute herein.

As was said in this Board's Award No. 4726 involving a similar dispute and similar scope rule as before us:

> "The regular steam generating plant is handled by a stationary engineer under Rule 1 (a) of the Agreement. The temporary 1962 summer replacement equipment used for the same purpose is a steam power plant and comes within the Agreement. It should, therefore, have been operated by a stationary engineer under the Agreement. Award 2295."

Therefore, we conclude that Carrier violated the Agreement in this instance.

As to damages, Carrier contends that at all times Claimants were fully employed and thus suffered no loss; that this Board does not have the authority to assess a penalty.

The Organization in its rebuttal to Carrier's ex parte submission contends that Claimants were not fully employed because the work involved was a seven (7) day a week around the clock operation and they are assigned in seven (7) day a week around the clock assignments; that they were no more fully

employed or unavailable throughout the claim dates than they were subsequent to the claim dates when they were properly assigned to operate said Power Car No. 92100 along with own regular assignments in the permanent power plants.

However, no proof was proffered by the Organization that Claimants suffered any monetary loss from their regular assignments as a result of the work being performed by laborers during said claim period. Therefore, suffering no pecuniary loss we must deny their claim in regard to compensation.

AWARD

Claim (1) sustained.
Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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