Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7722
SECOND DIVISION Docket No. 7576-T
2-CMStP&P-BM-'78

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Boilermakers-Blacksmiths)
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That, in violation of the current agreements the Carrier misassigned work belonging to the Boilermaker Craft, when on date of May 26, 1976, Machinists were assigned to remove the roof section of diesel unit #156, and on May 27, 1976, Machinists were assigned to replace the roof section on diesel unit # 156.

2. That accordingly, the Carrier be ordered to compensate Claimant Retterath at the prevailing overtime rate for call time of:

   (a) Three hours and twenty minutes for work performed by the Machinists on May 26, 1976.

   (b) Three hours and twenty minutes for work performed by the Machinists on May 27, 1976.

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.

Claimant argues that Carrier violated Agreement when it assigned Machinists to remove the roof section of diesel unit # 156 on May 26, 1976 and replace said section on May 27, 1976. It contends that such work is not running repair work and therefore not subject to the provisions of the Incidental Work Rule. Instead, it asserts that Agreement Rules 59 and 62 are applicable to the fact specifics herein.

Carrier, on the other hand, avers that the nature and duration of this work represents running repair work, which by definition and practice falls within the coverage parameters of the incidental work rule. It argues that claimant was afforded an opportunity, pursuant to the incidental work rule to determine whether the disputed work comprised a preponderant part of the assignment.

The Incidental Work Rule and Agreement Rule 62(c) are quoted hereinafter:

INCIDENTAL WORK RULE - PUBLIC LAW 91-226

"At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.

If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the shop committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the Carrier for the actual time at pro rata rates required to perform the incidental work."

RULE 62 DEAD WORK

"(c) Dead work means all work on an engine which cannot be handled within twenty-four (24) hours by the regularly assigned running repair forces maintained at point where the question arises."

This Board certainly recognizes the important distinctions and arguments raised in this dispute and accordingly has carefully reviewed the events and circumstances within the context of the cited Agreement provisions, the letter and intent of the Incidental Work Rule and pertinent decisional law.

We find, however, that despite disclaimers to the contrary, that running repair work is performed at the Tacoma Terminal, and that the original assignment to remove a defective radiator, from diesel unit # 156 was properly machinists' work. The ancillary job of removing and replacing the roof did not comprise a preponderant part of the work assignment and was de facto incidental the machinists' primary assigmment. Moreover, we find nothing in this work assigmment that would place it within the ambit of the Incidental Work Rule exemptions.

We understand quite clearly the significance of claimant's argument that the diesel unit was out of service for more than twenty four (24) hours, but the main job of removing the defective radiator was machinists' work solely and it required limited incidental efforts to complete it successfully.

Conversely, we do not have sufficient probative evidence that would ably demonstrate that all work irrespective of duration and craft assigmment that is performed on dead engines is exempt from the Incidental Work Rule's requirements. The main work in this assigmment belonged singularly to the machinists and the removal and replacing of the roof was incidental.

While precedent cases invariably possess distinguishing argumentative characteristics which can be creatively construed to cover a multiplicity of fact situations, we believe that holding and opinion of Second Division Award No. 7610 (Referee Lieberman) is on point with this case. We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 1st day of November, 1978.