

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12165
Docket No. 11888
91-2-90-2-21

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. The Carrier has violated Rule 85 of the current Shopcraft Agreement and Award #11283 from the National Railroad Adjustment Board, Second Division.

2. That accordingly, Claimants Jeff Swanson and Richard Swensen be paid fifteen (15) minutes over and above their regular pay for the dates listed for a total of ten (10) hours to Jeff Swanson and five (5) hours and forty-five (45) minutes to Richard Swensen.

Jeff Swanson: August 16, 17, 28, 29, 22, 23, 24, 25, 26,
29, 30, 31
September 1, 2, 6, 7, 8, 9, 12, 13, 14, 14, 16,
19, 20, 21, 22, 23, 26, 27, 29, 30
October 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18,
19, 24, 25, 26, 27, 28, 31
November 1, 2, 3, 4, 7, 8, 9.

Richard Swensen: October 10, 11, 12, 13, 14, 17, 18, 19, 20, 21,
24, 25, 26, 27, 28, 31
November 1, 2, 3, 4, 7, 8, 9

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Organization filed a claim on November 16, 1988, wherein it charged that Carrier violated Rule 85 of the current Shopcraft Agreement and Second Division Award 11283. Rule 85 reads:

"Operators of overhead shop cranes will be allowed fifteen minutes per day at the straight time rate when required to oil cranes outside of and in addition to their regular eight hour assignment."

The Organization contends that consistent with long term on situs practice and the Second Division's majority ruling in Award 11283, Carrier is required to compensate Claimants fifteen minutes extra each day as prep time for the maintenance of cranes. In that Award, the Majority held:

"Given the fact that the rule is not clear on its face, we are not free to interpret it and ignore past practice. We find that the interpretation given to the rule by the parties for many years must govern."

In 1988, Crane Operators were instructed to oil the cranes once each week.

In response Carrier maintains that while Electricians were paid this allowance irrespective of whether they oiled cranes during or outside of their regular shift, said payment is not justified by Rule 85 or Award 11283, when the oiling function is not performed. More specifically, said Award did not address the question of whether such payment is contractually required when cranes are not oiled. It observes that the specific wording in Rule 85 "when required to oil cranes" conveys an unmistakable conditional application. In other words, payment is contingent upon the actual performance of crane oiling work. In considering this case, the Board takes judicial notice that the issue herein is different from the adjudicative issue in Award 11283 in that the issue presently before us does not relate to the fifteen minutes extra straight time payment within the Electrician's eight hour workday. Rather, the question relates to whether such payment is required when Carrier changes the lubrication requirements of oiling cranes. More pointedly, the issue boils down to whether such payment relates to an inherent prep time payment, as argued by the Organization, or whether such payment is allowable only when Electricians are required (directed) by management to oil cranes. There is no dispute that prior to 1988, Carrier historically tendered such payment on a daily basis, even when the overhead cranes were not oiled, but there is a definable positional standoff as to the meaning of the words, "when required" and Carrier's asserted prerogative to apply literally clear contract language. Since there are no contractual impediments precluding Carrier from varying the equipment's maintenance schedule (oiling) and since the beginning portion of Rule 85 contains specific language, conditioning payment upon the oiling of the overhead cranes, unlike the more ambiguous portion of Rule 85, which the Division's majority correctly interpreted in Award 11283, this Board must give effect to the clear language of Rule 85, particularly the beginning portion premising extra payment upon performance of certain work. Since the words "when required" connotes discretionary action and since Carrier can determine when the cranes are to be oiled, and since past practice cannot overcome unambiguous contract language and since this work was not performed by management or non-agreement covered employees, this Board must find for Carrier's position. In Award 11283 we used past practice to conclude that the extra fifteen

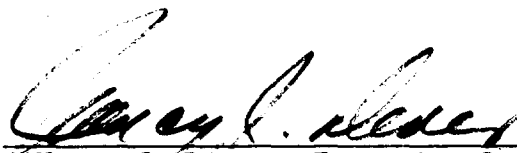
minutes straight time payment must be paid when crane operators oil cranes during their eight hour assignment, but we did not consider whether such payment was due every workday, irrespective of whether the cranes were oiled. There are no contractual limitations barring Carrier from determining when cranes are to be oiled, but consistent with our decision in Award 11283, the fifteen minutes straight time compensation is to be paid when crane operators are required to oil cranes outside of and in addition to their regular eight hour assignment. Furthermore, and this point provides additional support for our position, the parties entered into an Agreement on May 22, 1950, applying to Proctor and Two Harbors, whereby it was agreed that to use crane operators in this manner was optional with management. If so used, the past practice of paying pro rata rates for the fifteen minutes involved would continue.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 16th day of October 1991.