

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12918
Docket No. 12802
95-2-93-2-217

The Second Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International
(Association
(CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Carrier, under the current working agreement between the Sheet Metal Workers and the Carrier, violated Rule #114 of the agreement.
2. That accordingly, the Carrier be ordered to compensate the employees S. Shafer and M. Honaker eight (8) hours pay each at the straight time rate."

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 employee 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.

As Third Party in Interest the International Brotherhood of Firemen & Oilers was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

The Organization contends that the Carrier violated Rule 114, Classification of Work, of the current Agreement, when it assigned other than employees covered by such Rule to operate a gasoline pump for the purpose of pumping water out of a sump pit at the Curtis Bay Coal Pier facility in Baltimore, Maryland, on December 2, 1991.

On the date in question, the Claimants (Pipefitters) were assigned the task of repairing the electrical sump pump at this particular pit, but were reportedly unable to do so prior to the end of their shift. Subsequent to the Claimants departing their shift, or during the 3:00 P.M. to 11:00 P.M. shift, the Carrier assigned two second shift Laborers (employees represented by the International Brotherhood of Firemen and Oilers) to install and use a gasoline pump to remove water from the sump pit.

In its denial of the claim, the Carrier said that the work was handled during the night shift at the Pier "since the sump pump failed to work during that time frame" and it was necessary for the crews "to install a gasoline pump to remove water before the electrical motors flooded." The Carrier thus says the work in question was performed "due to the emergency situation."

Further, the Carrier asserts that this same type of work has been performed by Laborers in the past and that such work is not exclusively assigned, by practice, to Pipefitters.

The Carrier also maintains that even assuming, arguendo, the claim had merit, and it submits it does not, that the hours claimed are excessive since only three hours were consumed in pumping water out of the pit.

Contrary to the contentions of the Carrier, the Organization maintains that the work in question is embraced in its Classification of Work Rule and, second, that there was no emergency. In this latter regard, the Organization points to the unrefuted statement of one of the Claimants that the pit was flooded all day, and that mention of such fact had been included on the daily work report. Further, the Organization directs attention to this Claimant having also stated that during the day, along with other work, he and the other Claimant had worked in "trying to repair" the existing pump, and that they were not told to remain beyond the quitting time of their shift to continue work on repair of the pump or to use the gasoline pump to remove water from the pit.

The Organization says that any need to have water pumped out of the pit should have been directed to the Claimants before quitting time. It also says that had there been an emergency as claimed by the Carrier that the Claimants should have been told to use the gasoline pump and that such pump could have been used all day long to remove water from the sump pit.

In the opinion of the Board, the defense offered by the Carrier against the claim is not found to have support of record. The instant claim appears to be wholly based on the theory that the use of Laborers deprived the Claimants of work to which they are entitled under their Classification of Work Rule, the claim as filed having included the assertion that pumping water out of the sump pit "has always been our work in the past and present," and, second, that there was no emergency.

Given this principal nature of the claim, together with a written statement as to the work assigned the Claimants, the Carrier was obliged to show valid reason for it to be held that it is in fact normal practice for Laborers to be assigned "to install and use gasoline pumps" to remove water from the sump pit. The record contains no probative showing, however, with respect to such Carrier contention.

While the question of whether an emergency situation existed is entitled to weight, the burden of proof about such matter is on the Carrier to establish by factual evidence. Here, there is no supportive proof for the contention that the electrical pumps had been repaired and failed to work during the second shift, or, that water in the pit had risen from the first shift to the second shift so as to be cause for an emergency, much less the manner in which the electric motors were in danger of being flooded.

It follows as a necessary conclusion that the actions of the Carrier must here be viewed under the circumstances of record as having deprived the Claimants of work covered by their Agreement and that they are entitled to compensation for time lost, as opposed to the eight hours as claimed. The Board finds this lost work opportunity to be the three hours that the Carrier says it took the Laborers to install the pump and remove water from the pit, or an amount of time that was not otherwise disputed by the Claimants. Accordingly, the claim will be sustained to the extent of allowing the Claimants three hours additional compensation each at the overtime rate of pay.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.