

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13410
Docket No. 13210-T
99-2-96-2-122**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc., (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rule 154 (a) and (b), when the carrier assigned boilermakers to perform work exclusively reserved to the carman craft.**
- 2. Accordingly, the carrier be instructed to pay carman D.D. Icenhower ID #624787, (hereinafter referred to as ‘claimant’) six hours at the applicable carman overtime rate for said violation.”**

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 were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim protests the Carrier's August 20, 1995 assignment of Boilermaker J. L. Thomas to apply the cab floor, door thresholds, ceiling insulation and perforated metal ceiling panels to Locomotive 8054 at the Huntington Locomotive Shop. The dispute involves Carrier's use of the Incidental Work Rule to assign work that has admittedly been historically performed by Carmen to employees outside the craft.

The Organization argues that such work is reserved to its craft under the language of Rule 154 (a) and (b). It contends that the Carrier may not rely upon the Incidental Work Rule in this case because the work in issue far exceeded the two hour time limit for the assignment of a simple task. The Organization relies upon a signed statement from Boilermaker Thomas specifying that his assignment on August 20, 1995 included continuing to apply the cab floor, door thresholds, insulation to the ceiling, and fabricating and applying perforated metal ceiling panels to the unit in question, and that such work took him six hours to perform.

The Carrier contends that this job assignment was permissible under the Incidental Work Rule because it involved a simple task that took less than two hours to perform. It relies upon a questionnaire filled out by the Relief Supervisor who made the job assignment indicating that the door and ceiling panel work was incidental to the overall repairs on the unit and took one hour to perform.

A review of the record reveals that the claim encompasses the application of the cab floor as well as work performed on the door and ceiling panels. There is no dispute that this work has historically been performed by Carmen. The Carrier's evidence as to the length of time it took to perform the disputed job assignment relates only to the door and ceiling panel aspects, and does not encompass the application of the cab floor. Because the Boilermaker involved specified that the disputed assignment took him six hours to perform on August 20, 1995, the Carrier's reliance on the Incidental Work Rule is misplaced. That Rule sets an outside time limit of two hours for the performance of a simple task. Because this assignment exceeded that time limit, it is not protected by the Incidental Work Rule, and violated Rule 154 (a) and (b) of the Agreement.

With respect to the appropriate remedy, it has been firmly established by the Board that the pro rata rate is the proper rate of compensation for work not performed, and is the appropriate measure of value of work lost. Second Division Award 6359. Accordingly, we direct that the Claimant be compensated six hours for the lost work opportunity on August 20, 1995 at his pro rata rate of pay.

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 June 1999.