

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13416
Docket No. 13260-T
99-2-97-2-28**

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 J.A. Ballew, ID #188664, (hereinafter referred to as ‘claimant’) six hours and forty-five minutes 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.

At issue in this case is a matter previously considered by the Board in numerous other cases involving these Parties and other Parties with similar provisions in their Agreements. At issue is the alleged assignment of work to employees not covered by the Carmen's Agreement. The principles for deciding such cases have been well enunciated in prior cases on this and other Boards. For example, see Second Division Award 13244 (involving the same Parties) and Public Law Board No. 4579, Award 8 (involving different Parties with similar Agreement provisions).

In sum, the standards the Board will use are those set forth by Presidential Emergency Board 219 as clarified by the Public Law 102-29 Special Board empowered to craft the definition of Incidental Work Rules.

PEB 219's recommendations were, in pertinent part, as follows:

"... (2) 'Incidental Work' be redefined to include simple tasks that require neither special training nor special tools. (3) The Carrier be allowed to assign such simple tasks to any craft employee capable of performing them for a maximum of two hours per work day, such hours not to be considered when determining what constitutes a 'preponderant part of the assignment.'"

The portion of the Special Board's decision which is of particular importance to the instant case reads as follows:

"... Work shall be regarded as incidental when it involves the removal and replacing or disconnecting 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, and shall include simple tasks that require neither special training nor special tools."

A review of the record in the present case indicates that the Carrier assigned a Boilermaker to assist a Carman in removing and replacing the draft gear and coupler on Locomotive 2635. The Organization asserted, and the Carrier did not refute that the total time required to accomplish the task was six hours and 45 minutes. Further, it was asserted by the Organization and confirmed by a written statement from the Boilermaker in question that he used an electric arc welder in the process of assisting the Carman.

Evidence on the record indicates persuasively that operation of an electric arc welder cannot be compared to using simple tools such as “wrenches, screwdrivers, simple drills, pliers, hammers, saws, pry bars, etc.” (Public Law Board No. 5479, Award 2). Evidence on the record indicates that Carmen are required to attend school to learn the skills associated with safe and effective operation of such equipment. Further, as Public Law Board No. 5479 also found, while other crafts may also perform welding, it is not a “simple task” as contemplated by the revised Incidental Work Rule, and the Carrier is not at liberty to assign the welding work of Carmen to a different craft. (Id., Award No. 7). Accordingly, in the case herein, we are compelled to find that the Carrier was not at liberty to employ a Boilermaker to assist the Carman performing the work at issue.

With respect to remedy, the Carrier asserted that the Organization’s claim is excessive. It maintains that because the Claimant performed no work, he is entitled to pay for the time in question only at the straight time rate. As the Board noted in Second Division Award 13244:

“ . . . The general position of the Division, absent Rule support otherwise, has been that pay for work not actually performed is limited to the straight time or pro rata rate of pay”

Accordingly, the Board sustains the claim, but only at the pro rata rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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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.