

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of the current working agreement between the Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employes when it did not assign J. Spangenburg to operate Ditcher Number 2 at Mohawk for twelve (12) hours per day during the period June 5, 1946 to June 14, 1946, both dates inclusive.

(2) That the Carrier violated the provisions of the current working agreement when it did not assign Kenneth Swift to J. Spangenburg's regular position during the period June 5, 1946, to June 14, 1946, both dates inclusive;

(3) That J. Spangenburg be allowed the difference in pay between what he did receive and what he would have received had he been assigned to operate Ditcher Number 2 at Mohawk for twelve (12) hours per day during the period June 5, 1946 to June 14, 1946, both dates inclusive;

(4) That Kenneth Swift be allowed the difference in pay between what he did receive and what he would have received had he been assigned to J. Spangenburg's regular position, during the period June 5, 1946 to June 14, 1946, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: On or about June 4, 1946, a coaling plant at Mohawk broke down and it became necessary for the management to find some other method of coaling its engines.

Ditcher No. 2, which machine is regularly assigned to the Maintenance of Way Department, and which is regularly operated by an employe covered under the scope of the Carrier's agreement with the Brotherhood of Maintenance of Way Employes was assigned to this service.

Because of the fact that it was necessary to have this machine available to coal engines 24 hours per day, the operator regularly assigned to this machine was required to work 12 hours per day and the Carrier then assigned an employe having no seniority in the Maintenance of Way Department to operate this machine during the remaining 12 hours of each 24 hour period. The Carrier's handling in this manner resulted in Fireman Spangenburg suffering a wage loss of a difference in pay between Ditcher Engineer's rate of \$275.56 per month and his rate of \$251.58 per month, and also resulted in Fireman Swift being deprived of a difference in earnings between his rate of \$220.78 per month and the rate of \$251.58 per month.

The work of coaling locomotives is within the scope of agreement effective October 1, 1942 covering laborers. Rule 1, Scope, of this agreement reads, in part, as follows:

"Rule 1, Scope, Agreement effective October 1, 1942 with International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers:

These rules govern the hours of service, working conditions and rates of pay of the classes of employes shown below, working in and about shops, power plants, train yards and engine terminals: * * *

B. * * *

17. Coal Dock Operators.

18. Crane Operators (coaling locomotives and handling ashes).

C. * * *

22. Coalers and Coal Chute Laborers."

The coaling of locomotives has never been considered as work belonging to the class of Maintenance of Way employes and no claim has ever been presented by Maintenance of Way employe for such work.

The fact that it was necessary to use equipment, which is ordinarily assigned to the Maintenance of Way Department, to perform work in the Mechanical Department, does not support claim that Maintenance of Way employes should operate the equipment and perform work which belongs to another class of employes, under the scope of another working agreement.

In the instant case the regular operator of the equipment transferred from the Maintenance of Way Department to the Mechanical Department was assigned to operate the machine for twelve (12) hours. It was necessary to use the equipment in continuous service and a Mechanical Department employe, regularly assigned to the work being performed, operated the machine for twelve (12) hours.

Claimant J. Spangenburg is a crane operator in the Maintenance of Way Department and performed his usual duties during the period of this claim. Claimant K. Swift is a crane fireman on the crane operated by Spangenburg and performed his usual duties during the period of this claim.

The question involved is whether work which is specifically covered by the Laborers' Agreement should be assigned to employes covered by the Maintenance of Way Agreement, when it is necessary to use equipment to perform the work which is ordinarily used by Maintenance of Way Employes in the performance of work under the Maintenance of Way Agreement. The Carrier contends that there are no circumstances which would support the claim of the Maintenance of Way Employes for work which is specifically covered by the scope of the Laborers' Agreement, and respectfully requests that claim be denied.

OPINION OF BOARD: Except for dates and fact that Carrier used Ditcher Number 2 instead of Ditcher Number 1, this claim is identical with that in Award No. 4546 and is controlled by that Award. In view of our holding therein this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.