

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, 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, that:

(1) The Carrier violated the provisions of the effective Agreement when it assigned employees holding no seniority in the Maintenance of Way Department to perform the work of repairing a locomotive coaler at Fort Edward, New York on Sunday, November 21, 1948;

(2) Steel Bridgemen Joseph Dougherty and Michael DeConno be allowed three (3) hours and thirty (30) minutes pay at their respective overtime rate, because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned the personnel of Steel Bridge Gang No. 55 to proceed to Fort Edward, New York on November 16, 1948, for the purpose of making necessary repairs to a locomotive coaler at that location.

Upon the arrival of Steel Bridge Gang No. 55 at Fort Edwards, they proceeded with the work of repairing the locomotive coaler, performing such service on November 17, 18, and 19, 1948.

The work performed by the Steel Bridgemen consisted of replacing certain worn parts on the coaler with parts taken from a similar coaler at Plattsburg. They also removed all the steel from the bottom ends of the coaler in order to facilitate an examination of the structure to determine the existing trouble. Temporary repairs were subsequently made by the Steel Bridgemen, after General Steel Foreman M. A. Clancy personally observed the condition of the coaler, remarking that he would order new parts which were to be installed by Steel Bridge Gang No. 55.

On Sunday, November 21, 1948, the Carrier assigned a Machinist and a Boilermaker from Whitehall, New York, to proceed to Fort Edward to make additional repairs to the locomotive coaler during overtime hours.

The Machinist and Boilermaker installed a piece of steel sheeting, one-fourth inch thick on the bottom end of the coaler. This steel sheeting when installed is designated as a "receiving plate", it is not a movable or mechanical part of the structure. This steel sheeting was cut and fabricated to conform

been at their homes and available and willing to accept a call for such a small amount of work had they been called upon.

It is not felt that the situation which existed after the repairs to the chain had been made could have been handled in any other way than to have the machinist and boilermaker make the necessary emergency repairs to the work section of the coal carrying receiving plate. It could not be foreseen prior to the repair of the chain that its operation would be retarded by the condition of the receiving plate; therefore, the services of a Bridge and Building Department employe could not have been requested to enable him to be on the spot to correct this condition and it likewise would have been impossible to wait until two men traveled over fifty (50) miles to reach the point of work. Carrier had to have the coal loading machine in operation, otherwise it would not have called out, at overtime rates, the machinist and boilermaker to make the mechanical repairs.

The service performed in repairing the receiving plate was an emergency and purely auxiliary to the mechanical repairs. Had the Carrier been forced to wait for these men from the Bridge and Building Department to be called and travel to Fort Edward, distances indicated on Page 2, such lapse of time might have caused a serious delay to both passenger and freight service. It is believed that the nature of the work was so related to the mechanical repairs that the service required of the machinist and boilermaker was justified. The employes of the Maintenance of Way Department were not available at the location of their headquarters to accept this emergency call.

It is noted that the Committee has made claim that employes, Dougherty and DeConno, be allowed pay at the overtime rate for the same number of hours as were consumed by the machinist and boilermaker. The Third Division has often ruled that a claim for punitive rate for service not performed is not in order.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that certain work on a locomotive coaler, which work belongs to Maintenance of Way employes under the Agreement between the parties, was assigned to and performed by a machinist and a boilermaker, who are not covered by that Agreement. Here, unlike the situation in Award No. 7387, there is no question that the work involved was traditionally and customarily performed by Maintenance of Way employes, and thus included within the scope rule of their Agreement. The Carrier concedes that this is so.

The question presented is whether the work required to be done was of an emergency nature so as to justify the Carrier in assigning it to employes outside the scope of the Agreement without being subject to a claim. This is Carrier's contention.

The facts are that Claimants were assigned to the work of repairing the coaler in question on Wednesday, Thursday and Friday. It was found during the course of the work that new parts were needed; temporary repairs were effected and the foreman stated that he would order the new parts which were to be installed by Claimants when they arrived. Saturday and Sunday were Claimants' rest days and on Sunday they were at their respective homes, 50 miles from the coaler. On Sunday, while the coaler was in use, a chain on a moving part of the coaler caught on the end of the receiving plate—a stationary part of the structure, and broke, making the loader inoperative. The Carrier called a machinist and a boilermaker from their homes some 22 miles distant to repair the machinery. When they arrived, it was discovered

that in addition to repairing the moving parts, it would be necessary to cut out and replace a bent section of the receiving plate in order to make the coaler operative. The machinist and boilermaker proceeded to make this repair to the receiving plate, which is concededly work belonging to Claimants' craft, and then made the mechanical repairs. No effort was made by Carrier to contact Claimants.

The foreman who assigned the machinist and boilermaker to the job states that they welded in a new section of plate "because it was an emergency in which the coal hoist had to be fixed immediately in order to have our locomotives coaled for service Monday morning and a welder from the steal gang was not available at the time to do the work."

It is not clear that a proper examination of the damage would not have revealed the need for welding work on the receiving plate before any employees were sent for. Having failed to discover this until after the machinist and boilermaker arrived, the Carrier was still not relieved of the obligation to telephone the Claimants to check their availability, unless the need to have the locomotives coaled for service the next morning was so urgent that an emergency would have been caused by a two-hour delay. In our view, there is not sufficient evidence in the record to bring this case within those Awards which have held Carriers justified in using employees other than those normally entitled to the work because of the emergency nature of the work in question. In the absence of such evidence, Carrier's failure to make any effort to contact the employees to whom the work belonged was a violation of the Agreement.

Claimants ask for three hours and thirty minutes pay at overtime rates. The three hour and thirty minute period is not explained in the record. The awards of this Division are nearly uniform in holding that claims for time not actually worked should be paid at pro-rata rather than overtime rate. Therefore, we find that Claimants should be paid at pro-rata rate for the time actually spent by the machinist and boilermaker in making repairs to the receiving plate only.

The issue of third-party notice raised by Carrier is not considered. See Award 7387.

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 Employees involved in this dispute are respectively carrier and employees 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 the Agreement was violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1956.

DISSENT TO AWARD NO. 7388, DOCKET NO. MW-5885

The Majority has erroneously held that the Carrier violated the Agreement by using a machinist and a boilermaker to make emergency repairs to a locomotive coaler. The Record showed that repairs to the coaler would have been delayed at least two hours if Maintenance of Way employes had been called from 50 miles away to perform a small amount of welding. By hindsight the Majority finds that an emergency would not have been created by the two-hour delay.

The Carrier is not clairvoyant, and the possibility of having to coal a main line locomotive is ever-present, therefore the Carrier is penalized because it took prompt measures to avoid the possibility of an emergency.

The Referee's statement relative to third-party notice is also erroneous, hence the Carrier Members' Special Concurrence to Award 7387 is equally applicable here.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen