

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Crispin Alfaro, fuel oil handler, Council Bluffs, Iowa, shall be paid for a call or three hours at pro rata rate on January 3, 1944 on account of that an employe from another department was assigned to perform work in connection with unloading of fuel oil.

EMPLOYEES' STATEMENT OF FACTS: Crispin Alfaro is the regular fuel oil handler at Council Bluffs, assigned to day service. During the night of January 3, 1944, the fuel supply at the roundhouse at Council Bluffs, Iowa, became nearly depleted and necessitated replenishment by unloading a car of oil. Instead of calling the regular fuel oil handler, Crispin Alfaro, for performance of this service, the Carrier assigned a roundhouse employe, a man who had no seniority rights in the performance of this service.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rules of Agreement in effect that are pertinent and governing are: Rule 1, first paragraph, and Group 7 thereof; and Rule 2(a), which read:

"RULE 1. SCOPE. These rules will govern the hours of service and working conditions of all employes not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department, nor employes performing work of a clerical nature) and employes listed below:

Coal Chute Foremen
Coal Chute Laborers
Locomotive Fuel Oil Handlers
Sand House Men
Track, Tunnel, Bridge and Highway Crossing Watchmen
Maintenance of Way Department Welder Foremen, Welders,
Grinders and Helpers
Roadway Machine Operators and Helpers.

supply tanks running out of fuel and the Roundhouse Foreman, in using the available hostler helper who was already on the ground, properly performed his duty. To have called fuel oil handler Crispin Alfaro and waited for his arrival on the scene of the emergency to merely open the valve would have created a hazard of serious damage to the Carrier's equipment as the weather on the night of January 3rd, 1944, was considerably below freezing.

Under the circumstances as existing, an emergency condition confronted us which called for and demanded immediate action and we feel there is no basis, therefore, for this claim and it should be denied.

OPINION OF BOARD: Facts in this case are not disputed. Claimant concedes "unexpected service" was required. Carrier claims an "emergency condition" existed. However described, immediate action was demanded. In view of the unusual circumstances we do not believe the Carrier violated the Scope rule of the Agreement by instructing the hostler helper, then and there on duty, to open the valve on the car of oil so that the supply tanks would be instantly replenished and the stationary boilers, faltering for want of fuel, could continue to supply necessary steam. The single act of opening the valve was the only operation necessary for the immediate relief of the situation. Time was of the essence. Delay would have resulted while the fuel oil handler was being called and pending his reaching the roundhouse.

In view of the particular circumstances of this case it is our decision that the purpose and intent of the Scope rule was not violated. We find no award involving a similar situation which calls for a different conclusion.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1945.