

Award No. 10706
Docket No. MW-9650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on April 29, 1955, June 22, 1955, July 29, 1955 and August 19, 1955, it assigned other than Maintenance of Way Water Service employees to perform the work of removing and replacing flexible fueling hoses at the diesel oil facilities in East Joliet, Illinois.

(2) Water Service Foreman F. C. Uhde and Water Service Mechanic A. J. Leone each be allowed pay for a minimum call of two (2) hours and forty (40) minutes at their respective time and one-half rates because of the violation occurring on April 29, 1955.

(3) Water Service Foreman F. C. Uhde and Water Service Mechanic Martin Mudroch each be allowed two (2) hours' pay at their respective straight time rates because of the violation occurring on June 22, 1955.

(4) Water Service Foreman F. C. Uhde, Water Service Mechanic A. J. Leone and Water Service Mechanic Helper L. Sylvester each be allowed one and one-half (1½) hours' pay at their respective straight time rates because of the violation occurring on July 29, 1955.

(5) Water Service Mechanic Martin Mudroch and Water Service Mechanic Helper L. Sylvester each be allowed two (2) hours' pay at their respective straight time rates because of the violation occurring on August 19, 1955.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains facilities to refuel its diesel locomotives at East Joliet, Illinois.

The refueling of the diesel locomotives is accomplished by the use of flexible fueling hoses somewhat in the manner in which gasoline is sold at a gasoline service station.

On April 29, 1955, June 22, 1955, July 29, 1955 and August 19, 1955 the

In view of the foregoing, the Carrier asks that the case be dismissed in its entirety.

All material data included herein have been discussed with the Organization either in conference or in correspondence.

OPINION OF BOARD: The Carrier maintains facilities to refuel its diesel locomotives at East Joliet, Illinois.

The refueling is done by flexible fueling hoses.

On April 29, 1955; June 22, 1955; July 29, 1955; and August 1, 1955 the work of removing and replacing defective fueling hoses at East Joliet was performed by Shop-Craft employees who hold no seniority rights under the provisions of the Agreement involved in this case.

Claimants allege that the Carrier violated its Agreement when it assigned other than Maintenance of Way Water Service employees to perform this work.

Rule 4 of the Agreement provides that seniority rights of all employees are confined to the sub-department and group in which employed.

In addition to the scope rule the Agreement contains Rule 56 (I) the pertinent parts of which read as follows:

"(e) An employee who is capable in the performance of and assigned to the installation and maintenance of steam, water, oil and air pipe lines, lavatories, drinking fountains, wiping and caulking lead joints, connections to water mains and curb stops, installing and maintaining water cranes, repairs to steam engines and steam and electric driven pumps, installing and maintaining sheet metal work on buildings and other water supply, plumbing and sheet metal work coming under the supervision of the Engineer Bridges and Buildings shall constitute a water supply mechanic.

(i) Helpers shall be employees who are assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule, and shall be required to provide only such mechanic's tools as may be necessary for them to learn the trade.

(j) All work described under Rule 56 (I) shall be performed by employees of the B&B sub-department, except as provided in Memorandum of Understanding dated November 8, 1939, and agreement with shop crafts effective April 3, 1922."

The Organization contends that the work of installing and maintaining fueling facilities which includes the replacing of defective fueling hoses attached to the oil pipes as part of the fueling system belongs to the Carrier's Water Service Employees.

Further that the Carrier maintains diesel oil facilities at other locations on the system and at each of these locations the work of removing and replacing defective fueling hoses is performed exclusively by Water Service employees.

The Carrier contends that the term "pipe" in Rule 56 (I) cannot be con-

strued to include "flexible hoses" in the scope of its reference. It makes further claim that ever since the installation of the equipment for fueling diesel engines at East Joliet, the equipment has been maintained by Shop Craft employes, i.e., the fuel oil filling hoses were repaired or renewed by Pipe-fitters from the locomotive shop.

The Carrier also takes the position that the second paragraph of Rule 62 is still in effect and that the claims are barred by virtue of this rule. The second paragraph of Rule 62 reads as follows:

"Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

On the other hand the Organization contends that the second paragraph of Rule 62 has been superseded by Article V of the August 21st Agreement of 1954 which contains no such provision.

The basic issue in this case in our opinion is whether or not the Water Service employes have the exclusive right under the Agreement to the work subject of this dispute.

Webster's defines "hose" and "pipe" as follows:

"Hose: A flexible pipe or tube, used to convey fluids, especially water from a hydrant. Such a pipe equipped with a nozzle and attachment—a sheath or sheathing part resembling such a pipe.

Pipe: A long tube of clay, concrete, metal, wood, etc. for conveying water, oil, gas or other fluids."

It appears to us from the record that the "flexible hoses" here involved are an integral part of the fueling facilities.

The Rule in our opinion is clear and unambiguous.

It is our conclusion that "flexible hoses" are included as part of the oil pipe line and that under Rule 56(I) the work subject of this dispute belongs to the Water Service employes.

The Board has considered the Carrier's contention in regard to Rule 62.

After consideration and a study of the record it is our opinion that Rule 62 is superseded by Article V of the August 21, 1954 Agreement, and therefore has no effect in this proceeding.

In view of the above the claim is sustained.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July, 1962.

CARRIER MEMBER'S DISSENT TO AWARD 10706 Docket MW-9650

Award 10706 is in error when it states as follows:

"After consideration and a study of the record it is our opinion that Rule 62 is superseded by Article V of the August 21, 1954 Agreement, and therefore has no effect in this proceeding."

It would, however, be correct to say that the first paragraph of Rule 62 was superseded by Article of the August 21, 1954 Agreement. This simply means that subsequent to the effective date of Article V of the August 21, 1954, Agreement, Rule 62 is composed of only one paragraph which relates strictly to damages. That paragraph, which reads as follows:

"Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

is in no manner related to nor in conflict with Article V of the August 21, 1954 Agreement.

This identical issue was before the Third Division (Supplemental) covered by Docket MW-8690, Award 10748.

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. DeRossett

/s/ O. B. Sayers

/s/ G. L. Naylor