

Award No. 567
Docket No. 588
2-B&M-MA-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: Charles W. Harlow should be compensated for eight hours, work at punitive rate for machinist's work performed by a machinist helper, May 28, 1940.

Joseph Boyland should be compensated for eight hours at punitive rate for machinist's work performed by a machinist helper, May 29, 1940.

That the management violated the provisions of Rule 26 of the working agreement by assigning a machinist helper in place of a machinist on the days in question.

JOINT STATEMENT OF FACTS: A machinist was laying off at the East Somerville enginehouse, which is a three trick point. The vacancy was on the 2:00 P. M. to 10:00 P. M. shift. A machinist helper was assigned to the job on the two days in question in place of the absent mechanic.

Charles W. Harlow presented a claim for compensation for the time worked by the helper on May 28.

Joseph Boyland presented a claim for compensation for the time worked by the helper on May 29.

The carrier declined the claims.

The effective date of the agreement between the parties to this dispute was April 1, 1937. Included in that agreement are the following rules:—

"Emergency Service

Rule 4—(In part) (a) For continuous service after regular bulletin hours, employees will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed."

"Assignment of Work

Rule 26—None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at point where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work.

In this case Machinist F. Kelleher at East Somerville, seniority date March 30, 1923, was absent on account of sickness, May 28 to June 2, 1940, inclusive. His assignment was from 2:00 P. M. to 10:00 P. M.

There were no furloughed machinists at East Somerville.

There were no furloughed men who had filed application to transfer under Rule 23 of Agreement of April 1, 1937.

Machinist Helper D. Verlotto, who entered service in that capacity July 26, 1922, was used as a machinist in place of Kelleher.

Claimants Harlow (Seniority March 28, 1923) and Boyland (seniority July 5, 1922) had a regular assignment on 6:00 A. M. to 2:00 P. M. shift and were, therefore, available to cover Kelleher's position.

Verlotto, while not a qualified Machinist under Rule 47, had previously been used as a machinist to some extent and was felt by local supervisory force to be capable of doing the work required in this case in absence of Kelleher, and did satisfactorily fill the position.

In the so-called "General Helpers" submission, which is Docket No. 580, Second Division, National Railroad Adjustment Board, we showed the efforts made by the management to provide a systematic way of promoting helpers, temporarily and permanently, to enable us to take care of work **when there are no furloughed mechanics** at a point; and no mechanics who wished to transfer under Rule 23, as well as the attitude of the committee on the question, and we respectfully request that the Board consider the correspondence in that docket (No. 580) without the necessity of repeating it here.

Verlotto was the **senior** helper at East Somerville, and under any reasonable regulations would be the helper to use as a mechanic when no mechanics or apprentices are available.

The committee may refer to Rule 8 of the agreement of April 1, 1937, covering distribution of overtime, but we do not consider that rule has any application. There has been no showing by committee during the handling of the grievance on the property, that Harlow and Boyland were entitled to work of Kelleher any more than several other machinists at the same point. For that reason, if for no other, claim for compensation should be denied by the Board.

As is also shown in "General Helpers" case, some of the general chairmen of crafts affiliated with System Federation No. 18 have either asked for helpers to be set up to mechanics or have approved of its being done and certain specific cases will be cited in supplemental statement to be read and filed at time of hearing.

Rules 26 and 4 (a) apply to all the shop crafts and while Rule 47 is machinists' qualification rule, there are rules similar for the other five crafts, and we earnestly request the Board consider what other chairmen have done in reaching decision in this case.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

There is no agreement in effect providing for "setting up" of helpers, i. e., promoting or advancing helpers to positions of mechanics either temporarily or permanently.

If such an agreement is made it must be made by the same representative authorities that negotiated the Schedule of Rules.

Mechanics may, of course, be employed as such under the provisions of the agreement but when so employed seniority as mechanics starts as per the provisions of the agreement.

AWARD

Third paragraph of claim of employes is sustained.

Claims for compensation for Machinists Harlow and Boyland are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1941.