

Award No. 712

Docket No. 729

2-T&P-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim of Machinists B. B. Bell, A. R. Watson for 10½ hours each, F. F. Powell, C. V. Polachek, 8 hours each and Machinist Helpers W. P. Rogers and W. E. Cowan 8 hours each at time and one-half rate, account not called to repair Fort Worth Belt Diesel engine No. 1, Sunday, July 13, 1941.

EMPLOYEES' STATEMENT OF FACTS: On Sunday, July 13, 1941, Fort Worth Belt Diesel engine No. 1 required repairs and was placed in the erecting shop where repairs were made with and by seven day assigned forces. Among the forces used were Machinists F. Buckingham, S. D. Young, C. S. Perry and C. R. Terry on the first shift; Machinists Buckingham and Young doing the erecting and repair work with Machinists Perry and Terry doing the machine work for this job. At the close of the first eight hour shift there were some repairs that were not completed and Machinists Ashley and Hutmacher, who work the second shift, were used to complete the job. The Texas and Pacific agreement with System Federation 121 does not cover or include the Fort Worth Belt property.

POSITION OF EMPLOYEES: The Texas and Pacific management contracted to repair Diesel engine No. 1 for the Fort Worth Belt Railway on Sunday July 13, 1941, with seven day assigned forces in the erecting shop at Fort Worth, Texas. The employees were paid the straight time rate for services performed. It is the contention of the employees that since Fort Worth Belt Diesel engine No. 1 was repaired in the erecting shop at Fort Worth, that six day assigned forces should have been called to make these repairs and accordingly paid the time and one-half rate. This contention is supported by the fact that Texas and Pacific agreement with System Federation 121, mechanical section, does not have coverage or extend over the Fort Worth Belt property, therefore, it is a separate property and should have no bearing whatsoever with regular running repair forces necessary for the continuous operation of the Texas and Pacific Railroad. Rule 2 (b) reads in part as follows: "Sunday and Holiday work will be required only when essential to the continuous operation of the railroad."

It is the further contention of the employees that when the Texas and Pacific Railway contracted to make repairs on the Fort Worth Belt Diesel engine No. 1, it was then subject to the conditions provided for in the Texas and Pacific agreement, and this would not be work that is necessary for the continuous operation of the Texas and Pacific Railway as contained in Rule 2 (b), and therefore, performance thereof should have been paid for

to the fact that six day assigned men were not called to work on this Diesel locomotive on Sunday, July 13, 1941, they should be paid time and one-half for this day. The reason the employees did not base their claim on any rule in the agreement was due to the fact there is no rule violation in this case.

The Fort Worth Belt Railway requested the carrier to perform this running repair job on their Diesel locomotive on Sunday, July 13, 1941. The engine was moved to our shop and work performed. When this railway has one of their engines tied up for repairs it is necessary that the carrier lease them an engine to work in its place until repairs have been completed to their engine. On this particular day, the carrier had ELEVEN switch jobs working and only TWELVE locomotives assigned to switch service at Fort Worth terminal, including the switch engine that was furnished the Fort Worth Belt Railway for relief duty until the Diesel engine was repaired and returned to service. The carrier could not delay repairs, Monday, July 14, 1941, to the Fort Worth Belt Diesel engine No. 1 as your Board will readily determine that with eleven switch jobs assigned at Fort Worth Terminal between the hours of 3:00 P. M., and 12:00 Midnight, and with only twelve locomotives in service, it was necessary to make repairs to this locomotive immediately. Hence we state that this was work that was essential to the continuous operation of the railroad.

The Fort Worth Belt Railway operates for the purpose of industry switching and delivery cars to this railway and had we not been able to work on this locomotive on Sunday, July 13, 1941, it would have meant delay in switching service on the Texas and Pacific Railway on Monday, July 14, 1941, as it would have been necessary to assign one of our own locomotives on the Fort Worth Belt, which would have resulted in not sufficient engines to have met our requirements.

There was no difference in regular seven day assigned forces working on Fort Worth Belt Diesel Engine No. 1 on Sunday, July 13, 1941, than working on Texas and Pacific switch engine on this day, performing running repair work. The employees will agree that we did, and still do, work on our switch engines each Sunday and holiday without any rule violation. It should be agreed that in view of the fact that the Fort Worth Belt Railway did and does operate for the purpose of serving this railway, there can be no rule violation by working on this locomotive with seven day assigned forces on Sunday, July 13, 1941. Also from the employees' letters written to the carrier, we do not find where their claim is based on any rule in the agreement with their organization.

In summing up the above claim, the carrier feels that it has proven:

1. The employees base their claim on no rule in the agreement. See Awards 2843 and 2845, First Division.
2. The carrier violated no rule by making running repairs to this Diesel on Sunday, July 13, 1941, with seven day assigned forces.
3. Rule 2 (b) provides that as mentioned in the above paragraph can be done.
4. That the carrier did have to make repairs to this locomotive on Sunday, July 13, 1941, or else not have sufficient switch locomotives to meet requirements on Monday, July 14, 1941.
5. That had the Diesel not been repaired until Monday, July 14, 1941, that the carrier would not have had its freight delivered to it on that day except by furnishing them an engine, which was not available, and would have suffered due to this.

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.

The carrier violated the provisions of paragraph (b) Rule 2 when they assigned regularly assigned seven-day men to perform the work involved in this case on the Fort Worth Belt Railway Company's Diesel engine No. 1.

Machinists B. B. Bell and A. R. Watson are entitled to ten and one-half ($10\frac{1}{2}$) hours pay at time and one-half rate for Sunday, July 13, 1941; and Machinists F. F. Powell and C. V. Polachek are entitled to eight (8) hours pay at time and one-half rate for Sunday, July 13, 1941.

There is no evidence showing that machinist helpers were used on the work involved on July 13, 1941.

AWARD

Claim of Machinists B. B. Bell, A. R. Watson, F. F. Powell and C. V. Polachek is sustained.

Claim of Machinist Helpers W. P. Rogers and W. E. Cowan is dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.