

Award No. 970

Docket No. 879

2-LV-MA-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That the carrier on September 23rd, and to November 16th, 1940 arbitrarily changed in violation of the then controlling agreement:

- (a) The classification of Albert Zittle and Arthur Maas from machinist leader to working foreman.
- (b) The pay from 92 cents per hour to \$210.00 per month.
- (c) The hours from eight (8) to ten (10) and more hours per day.

That in consideration of the aforesaid violations, Albert Zittle and Arthur Maas be paid time and one-half for all time worked in the excess of eight (8) hours for each day between September the 23rd, and November the 16th, 1940 at the rate of 92 cents per hour.

EMPLOYES' STATEMENT OF FACTS: Prior to September 23, 1940, Machinists Albert Zittle and Arthur Maas were employed at the East Buffalo roundhouse as machinist leaders at 92 cents per hour, eight hours per day. Between September 23, and November 16, 1940, these claimants were classified as working foremen at \$210.00 per month, ten hours and more per day.

The claimants performed the same work between September 23 and November 16, 1940, as they did prior and subsequent thereto. On November 16, 1940, these claimants were restored to the conditions of employment which they enjoyed prior to September 23, 1940.

Efforts were made to prevent the aforesaid arrangement made by the carrier and also efforts were made to adjust them after they did occur, but to no avail, until November 16, 1940, when the rates as they existed on September 22, 1940, were restored.

The carrier has definitely declined to adjust the pay claim.

POSITION OF EMPLOYES: The agreement that was in effect at the time this alleged violation took place was effective on May 1, 1938, and was between the Lehigh Valley Railroad Company, and the Association of Maintenance Employes, and remained in effect until the new agreement was negotiated and went into effect on November 1, 1942, the new agreement being negotiated by System Federation No. 96, Railway Employes' Department.

POSITION OF CARRIER: In making this rearrangement of forces at East Buffalo, there was no violation of the agreement in effect at the time, and the rearrangement was in accord with the practice in effect for many years at all points on the system, and in view of the fact that this was the first complaint against the plan, we must conclude that in all the years it had been satisfactory to the employees. Changes of the kind, while not required by the working agreement, were always discussed with the men involved, as was done in this case, and the plan seemed entirely satisfactory to the men involved, evidently due to the time allowed off during the month and the rate of the position. We have, however, no exact facts to decide why the men changed their opinion of the arrangement.

In discussing the change with the claimants, they appeared to be pleased with the arrangement, and it was not until after the plan had been in effect for a short time that they advised the arrangement was not agreeable to them and they wanted to have the positions of foreman abolished and the positions of leader restored, which was agreed to and the change made effective November 16, 1940.

We never have and did not in this case force men to take a foremanship, and if the arrangement was not satisfactory to them, they had the full privilege to decline to accept the foremanship and assert their rights in accordance with their seniority on the mechanics' roster. As will be noted from the above, when they did advise the management that they did not wish to continue in the positions as foreman, they were restored to their full rights in accordance with their seniority.

In view of the fact that there was no violation of our agreement and the fact that an adjustment was made in reasonable time, we ask that the claim be denied.

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 evidence of record supports the following conclusions: that the change in classification of Machinist Leaders Zittle and Maas, during the period September 23, 1940 to November 16, 1940, constituted a violation of the agreement; that the establishment of a monthly salary for them, to cover all service rendered, in place of their hourly wage rates, with the right to overtime for all service rendered in excess of eight hours each day, likewise constituted a violation of the agreement; and that the claimants are entitled to be compensated for all time worked during this period at the basic rate of 92 cents per hour and at time and one-half for all hours worked each day in excess of eight hours.

AWARD

Claim sustained in conformity with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 3rd day of November, 1943.