

Award No. 971

Docket No. 880

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:

1. That at Suspension Bridge Enginehouse during the period of October 9th to November 16th, 1940 the carrier violated the then controlling agreement by:

- (a) The arbitrary assignment of Enginehouse Foreman R. F. Dibble to performing Machinists' work on the 7:00 A. M. to 3:00 P. M. shift.
- (b) The arbitrary laying off of Machinist Leader L. Eperyes who was working extra not less than 3 days a week and was thereby damaged to the amount of \$139.36.
- (c) The arbitrary displacement of Machinist Leader D. Flora from regular work to extra work and was thereby damaged to the amount of \$103.52.

2. That in consideration of the aforesaid violations, the carrier be ordered to:

- (a) Reimburse Machinist Leader L. Eperyes in the amount of \$139.36 and
- (b) Reimburse Machinist Leader D. Flora in the amount of \$103.52.

EMPLOYES' STATEMENT OF FACTS: Immediately prior to October 9, 1940, the carrier maintained at the suspension bridge enginehouse, New York, three (3) shifts of machinists, as follows:

- (a) Foreman R. F. Dibble and Machinist H. F. Wright on the 7:00 A. M. to 3:00 P. M. shift.
- (b) Machinist Leader D. Flora on the 3:00 P. M. to 11:00 P. M. shift.
- (c) Machinist Leader G. H. Edmiston on the 11:00 P. M. to 7:00 A. M. shift.
- (d) Machinist Leader L. Eperyes worked as relief and as extra work man who averaged 3 or more days a week.

In support of our claim and facts, we submit Exhibit A, letter dated September 23, 1940, from local committee chairman to assistant superintendent of motive power; Exhibit B, letter dated October 12, 1940, to enginehouse foreman; Exhibit C, seniority roster of machinists; Exhibit D, an itemized statement of claims; Exhibit E, letter dated November 23, 1942, from assistant to vice president and general manager to the general chairman of machinists; Exhibit F, letter dated January 15, 1943, from assistant to vice president and general manager to general chairman of machinists; Exhibit G, dated January 16, 1943, from assistant to vice president and general manager to general chairman of machinists; and Exhibit H, dated February 15, 1943, to assistant to vice president and general manager from the general chairman of the machinists.

CARRIER'S STATEMENT OF FACTS: On October 9, 1940, on account of small amount of work in the enginehouse at suspension bridge and the small number of men employed, it was concluded the position of working foreman should be established, making unnecessary the continuance of a machinist leader on that trick, and the men affected were given displacement rights in accordance with their seniority.

POSITION OF CARRIER: The agreement in effect at the time this change was made did not include foremen, nor was there any provision in the same covering the appointment of a foreman, and we were entirely within our rights in establishing working foreman's position at this point and in making any reduction in force in accordance with the requirements of the service.

While in the employees' statement of claim, they do not cite the rule violated, in the discussion on the property, they offered the argument that Rule 31 (2) reading:

Seniority of employees in each craft will be confined to the point where employed in the Maintenance of Equipment Department,

and Rule 36 (2) reading:

If the charge is not sustained, it shall be stricken from the records, and the employe shall be compensated for any wage loss, such loss being the difference between the amount earned, if otherwise employed, and the amount he would have earned in his regular assignment,

were violated.

In view of the fact that these rules do not apply to foremen, and that it was the practice under this agreement to appoint foremen, including working foremen, without regard to their seniority, there is no basis for any claim of violation of rules.

This is the first instance in which any exception had been taken by employees to the appointment of foremen under similar conditions. As there was no violation of the working agreement, and the action taken was in line with the practice in effect for all time, the claim should 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 conclusion that the assignment of Enginehouse Foreman Dibble to the performance of machinists' work on the 7:00 A. M. to 3:00 P. M., shift, during the period October 9, 1940 to Novem-

ber 16, 1940, the laying off of Machinist Leader Eperyes from extra work during that period, and the shifting of Machinist Leader Flora from regular work to extra work during the same period, constituted a violation of the controlling agreement and damaged the claimants as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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