

Award No. 2470

Docket No. 2268

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1.—That under the current Agreement, Machinist (Grade-C) Michael Betz, Pitcairn Car Machine Shop (Truck Shop), Pitcairn, Pennsylvania, was unjustly dealt with, when he was denied the right to perform work at Buffalo, New York, on February 8th, 9th, 10th and 11th, 1953.

2.—That accordingly the Carrier be ordered to compensate him, the difference between what he earned, and that which he would have earned, on the above mentioned dates, had he been properly used.

EMPLOYEES' STATEMENT OF FACTS: Machinist Michael Betz, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a machinist (C-Grade), in the Pitcairn car machine shop (truck shop), Pitcairn, Pennsylvania, with first shift assigned hours of 7 A. M. to 12 Noon and 12:20 P. M. to 3:20 P. M., Monday through Friday, with Saturday and Sunday rest days. The claimant holds the only Grade-C- position bulletined in the truck shop, and has a machinist seniority date of 3-1-34.

Machinist O. G. Overly, is bulletined and assigned to a position of Grade -E machinist, with first shift assigned hours of 7 A. M. to 12 Noon and 12:20 P. M. to 3:20 P. M., Monday through Friday, with rest days of Saturday and Sunday. Machinist O. G. Overly holds a machinist seniority date of 8-18-40.

Several hump motor cars from Buffalo, New York, were changed from conventional transmission to DeSoto type hydromatic drive, at Pitcairn car machine shop (truck shop), by the machinist craft employes. After the conversion was completed, the cars were returned to Buffalo, New York for service. The carrier's superintendent of motive power, instructed the local supervision to send a qualified man from Pitcairn to Buffalo, New York, to check the performance of these hump motor cars, and instruct the operators in the operation of the new transmission.

tion shall be the subject of negotiation between the proper local officer of the Company and the local representative of the employees."

It is the intention of Rule 4-A-2 (d) to recognize that local agreements are necessary if it is desired to distribute work among regular employes when the carrier requires work to be performed on days on which they are not assigned to work. In these circumstances the claimant's right to work on Sunday, February 8, 1953, would depend on the provisions of a local agreement. As is shown in the statement of facts, no such local agreement is in effect at Pitcairn car machine shop. There is, therefore, no requirement imposed on the carrier to assign the work in question to the claimant.

In the employes' statement of claim, they are requesting compensation for the difference between what claimant earned and that which he would have earned had he been used.

The carrier asserts that the claimant performed service on Monday, February 9, 1953, for which he earned compensation in excess of that received by Mr. Overly at Buffalo. It is obvious, therefore, that in any event, claimant would not be entitled to compensation claim for Monday, February 9, 1953.

In summary, the carrier has established that the special work to which Mr. Overly was assigned during the dates involved, was not subject to nor in fact embraced within the scope and purview of the agreement applicable here; that claimant Betz had no demand right to such work, and that he is not entitled to the compensation which he claims.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act, to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L., System Federation No. 152, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the assignment of Mr. Overly to the special work here in question during period involved, was not improper under the agreement applicable here, and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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.

In the carrier's submission it objected to the jurisdiction of the Board claiming it had not received due and proper notice of the claim herein made against it. At the oral hearing before the Board on February 21, 1957, counsel for the carrier stipulated that this case was properly filed and properly before the Board for decision. Consequently, there is no reason to now consider the carrier's original objection to jurisdiction of the Board.

The record discloses that several hump motor cars from Buffalo, New York were changed from convention transmission to DeSoto type hydromatic drive at the carrier's Pitcairn Car Machine Shop. After conversion the cars were returned to Buffalo for service. Management decided to send someone from Pitcairn to Buffalo to check the operations of these cars and if necessary to instruct the operators. Machinist O. G. Overly, who is admittedly junior to the claimant, was sent from Pitcairn to Buffalo to perform the mission. There is no question as to the qualifications of the claimant, who had worked on hump cars, but management preferred to send the junior employe because it believed he was best qualified. Some of the work was on overtime, and the organization claims that it was the practice to offer such overtime work to the senior, qualified employe. We find as a fact from the record that prior to a formal, written understanding on December 11, 1953, such an understanding or agreement did exist and was observed. Accordingly, the overtime work herein should have been offered to the senior, qualified employe who is the claimant.

The carrier contended that the work in Buffalo was outside the claimant's home seniority district. This is perhaps true, but we do not believe it alters the fact that the work was done on overtime and at the direction of management. The worker is not to be penalized for obeying management's proper and lawful instructions.

AWARD

The claim of the employe is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.