

Award No. 3657

Docket No. 3275

2-N&W-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Machinists)**

**NORFOLK AND WESTERN RAILWAY COMPANY
(Virginian Railway Company)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, the Carrier improperly assigned other than Machinists to remove and apply a hoist at Page, West Virginia.

2. That accordingly, Carrier be ordered to compensate Machinist Charles Emanuelo, hereinafter known as the Claimant, for nine (9) hours and thirteen (13) minutes, at time and one-half for work performed at Page, West Virginia, on August 27th, 1957.

EMPLOYEES' STATEMENT OF FACTS: On August 27th, 1957, the carrier sent an electrician from Mullens, West Virginia to Page, West Virginia, to remove and install a hoist while the claimant, first out on the overtime board, was willing and available to perform this work. Previous to this date, machinists were sent from Mullens, West Virginia to Page, West Virginia to perform this same work. Also machinists are sent from Mullens, West Virginia to Page, West Virginia for emergency work and to fill vacancies. Page, West Virginia is a small outlying point and only one (1) machinist is employed.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective January 1, 1943, as subsequently amended is controlling.

Rule 29(a) reads:

“(a) Seniority of employes in each craft covered by this agreement shall be confined to the point employed in the Maintenance of Equipment Department, as set out below; except high tension linemen, bonders and their helpers shall hold seniority over the entire electrified zone of the system: * * *”

Under this rule no machinists other than the above three men has any seniority right to work at Page. The rule specifically states that seniority is “confined” to the point employed. The claimant in this case was not employed at Page and does not hold any seniority right to work at Page and therefore can have no valid claim for not being called for work at that point.

In conclusion, the carrier would like to emphasize these pertinent facts:

1. An electrician was required to perform the work in question and inasmuch as no electrician was assigned or held seniority at Page an electrician who was on duty at Mullens Shop was sent to perform the work. Any machinist work he may have performed was only incidental to his work as electrician.

2. Claimant Emanuelo held no seniority as machinist at Page, W. Va., and, therefore, has no right to claim work at that point.

The claim in this case should be declined.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The work in dispute involves the removal and installation of an ice hoist at Page, West Virginia on August 27, 1957. This work became necessary due to the need to replace a defective electric motor on the hoist. The motor replacement was done by an electrician and an apprentice electrician sent from Carrier's shops at Mullens, West Virginia. The hoist removal and installation task also was performed by these two employes, with the assistance of a laborer regularly assigned at Page.

The machinists' scope rule in the Agreement (Rule 52) specifically refers to “dismantling and installing . . . hoists.” In the light of such specific language, we conclude that the work in dispute belongs to the machinists' craft. If it were shown that it was not possible to obtain a machinist to perform this work, there would be grounds for refusing to penalize the Carrier for failure to utilize a machinist in the subject instance. No such showing is made in this record, however. In view of its inability to contact the machinist regularly assigned at Page to perform this work during his off-duty hours on August 27, 1957, Carrier should have endeavored to send a machinist from Mullens Shop, as was done with the electrician and apprentice electrician.

Contention is made that the work in question was properly done by other than machinists because it was only incidental to electricians' work, and that all that was needed in addition to the two employes sent from Mullens Shop was extra manpower to remove and replace the hoist and motor. Award No. 1790 is cited in support of this contention.

We do not think the disputed work is comparable with the mere removal of a cab side sheet in order to make repairs, as was done in Award No. 1790. Further, the governing agreement language in that award was not as specific as in the instant case.

Rule 30(c), which deals with the use of mechanics at outlying points, does not support the Carrier's position in this case. The electrician and apprentice electrician were not employed at Page within the meaning of that rule.

Carrier asserts that had the work at Page required the services of a machinist it would have sent a machinist who was already on duty at Mullens Shop on the date involved, instead of calling out the claimant on his rest day. Carrier also points out the claimant had no seniority at Page. It is urged that for these reasons the claimant could have no claim to work arising there. These arguments are adequately answered by our Awards No. 1040 and No. 2214.

The claim will be sustained but at pro rata rate and for a number of hours not in excess of the time spent by the electrician and apprentice electrician on the assignment at Page on August 27, 1957, including round trip travel between Mullens Shop and Page.

AWARD

Claim sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1961.