

**Award No. 344**

**Docket No. 357**

**2-DL&W-MA-'39**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DELAWARE, LACKAWANNA AND WESTERN  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** Mr. D. J. Madigan, a machinist helper, was appointed foreman at Oswego enginehouse of the railroad company, at Oswego, New York, July 15, 1937, in violation and disregard of Rule 14 of the agreement dated November 1, 1935, between the parties hereto and that he be restored to service at East Binghamton enginehouse with seniority as a machinist helper unimpaired.

**JOINT STATEMENT OF FACTS:** (1) Mr. D. J. Madigan, regularly employed by the railroad company as a machinist helper at East Binghamton, New York, was appointed foreman at the Oswego enginehouse, Oswego, New York, on July 15, 1937.

(2) Rule 14 of said agreement which is alleged by the employees to have been violated insofar as it relates to the dispute herein, reads as follows:

**"Promotion to Foremen**

Rule 14. Mechanics in service will be considered for promotion to position of Foremen or Assistant Foremen.

**\* \* \***

(3) The regular force employed by the railroad company at its Oswego enginehouse consists of only two foremen and one helper, a total of three employees, no mechanics being employed.

The Oswego enginehouse is a turnaround point for one passenger engine from Binghamton, New York, and one freight engine from Syracuse, New York, each day. There is also one small switch engine operating at Oswego, New York, and the switch engine is sent to Syracuse, New York, at least once each month, for mechanical maintenance. In emergency cases, when mechanical maintenance is necessary to any of these three engines at Oswego, New York, duly qualified mechanics are sent to Oswego, New York, from Syracuse, New York, to perform the work.

Mr. D. J. Madigan, in addition to his supervisory and other duties at Oswego enginehouse, conducts daily inspection of said three locomotives as required by I. C. C. rules and occasionally performs minor running repair work, which is generally recognized as shop crafts mechanics' work, under

on the history of the rule and its application by another and independent agency. The interpretation placed upon the rule by Mr. McManamy is the only one the language of the rule permits, and that is that at points where there are no mechanics employed, a foreman can do mechanic's work"

**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 waived right of appearance at hearing thereon.

The facts of record do not support the claim of employes that Rule 14 was violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1939.