

Award No. 568

Docket No. 595

2-B&M-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That Daniel White, machinist, should be compensated for eight hours at punitive rate for work performed by Machinist Helper L. J. De Crescente on the 2:00 P. M. to 10:00 P. M. shift, May 21, 1940.

That the carrier is without right to assign helpers in place of mechanics.

That the instant case constitutes a violation of Rules 26 and 47.

JOINT STATEMENT OF FACTS: Daniel White is a machinist assigned to the 6:00 A. M. to 2:00 P. M. shift at the Mechanicville enginehouse.

On May 20, 1940, Enginehouse Foreman J. F. Murphy laid off sick, his hours being from 10:00 P. M. to 6:00 A. M., and Machinist J. C. Higgins whose regular assignment was from 2:00 P. M. to 10:00 P. M., doubled over as foreman from 10:00 P. M., May 20 to 6:00 A. M., May 21.

Machinist Higgins was told not to report for his regular tour of duty 2:00 P. M. to 10:00 P. M., but to report in place of Foreman Murphy at 10:00 P. M.

It was necessary to fill Machinist Higgins' job from 2:00 P. M. to 10:00 P. M. Machinist Helper L. J. DeCrescente was assigned in place of Machinist Higgins on the 2:00 P. M. to 10:00 P. M. shift and Machinist White made claim for eight hours at punitive rate which was supported by the machinists' committee but declined by the management.

The following rules are contained in the agreement between the parties to this dispute, which agreement became effective April 1, 1937.

"Emergency Service

Rule 4. (In part) (a) For continuous service after regular bulletin hours, employees will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed."

"Assignment of Work

Rule 26. None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, * * *

General Chairman Davis has stated that the claimant in this case, Machinist Daniel White, was not called to double over on Machinist Higgins' job because the carrier was attempting to avoid the payment of punitive rate. This statement is not correct as it is evidenced by the fact that Machinist Higgins had been privileged to cover his own regular assignment in addition to covering Foreman Murphy's job 10:00 P. M. to 6:00 A. M. Machinist Higgins called on phone and requested to be relieved of covering his regular assignment 2:00 P. M. to 10:00 P. M. in the event he was going to cover Foreman Murphy's job that night, May 21, 1940.

In the foregoing, with reference to the time worked by employees involved in this case, May 16 to 26, 1940 inclusive, is further evidence that the carrier had allowed machinists to double over in several instances and would have done so in this case had it been possible. The carrier did not intend or attempt to avoid payment of overtime as claimed by employees.

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 employees 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.

There is no agreement in effect providing for "setting up" of helpers, i. e., promoting or advancing helpers to positions of mechanics either temporarily or permanently.

If such an agreement is made it must be made by the same representative authorities that negotiated the Schedule of Rules.

Mechanics may, of course, be employed as such under the provisions of the agreement but when so employed seniority as mechanics starts as per the provisions of the agreement.

AWARD

The second and third paragraphs of the claim of employes are sustained.

The claim for compensation for Machinist Daniel White is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1941.