

**Award No. 597**  
**Docket No. 589**  
**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 Homer W. Rogers should be compensated for eight (8) hours at punitive rate for work performed by A. N. Dunsmore in Concord enginehouse, January 6, 1940.

**JOINT STATEMENT OF FACTS:** At Concord, N. H. the locomotive back shop and enginehouse are in separate seniority districts.

Assistant Foreman Silva, Concord enginehouse, was allowed one of his two days a month off on Saturday, January 6, 1940.

Machinist Raymond C. Hilliard, seniority date as machinist December 6, 1927, Concord enginehouse, worked in place of Silva and Hilliard's job, 11:00 P. M. to 7:00 A. M., was filled by A. N. Dunsmore, machinist, with seniority date of October 3, 1938, in Concord enginehouse shop.

Homer W. Rogers, machinist, Concord enginehouse, seniority date October 6, 1922, claimed one day at time and one-half because he was not used in place of Hilliard instead of Dunsmore.

Rogers, who has a regular assignment on 7:00 A. M. to 3:00 P. M. shift, worked that shift January 5 and January 7, 1940. Saturday (January 6, was Saturday) was his regular day off.

Management offered one day at straight time in settlement of the claim which was declined by the committee.

There was in full force an agreement between System Federation No. 18, Railway Employees' Department, American Federation of Labor and the Boston and Maine Railroad, which became effective April 1, 1937. Rule 25 of that agreement reads as follows:—

**SENIORITY**

Rule 25—Seniority of employes in each craft covered by this Agreement shall be confined to the point employed in each of the following departments:

Maintenance of Equipment  
Maintenance of Way  
Maintenance of Telegraph and Telephone  
Electrical Workers in Signal Department  
Stores Department  
Five Sub-divisions of Carmen as follows:  
Pattern Makers  
Upholsterers  
Painters  
Other Carmen  
Coach Cleaners

must be subject to censure, for a man who is entitled to certain work and to penalize the carrier if it is not given to him, must himself be penalized if not available.

The work done by Dunsmore on 11:00 P. M. to 7:00 A. M. shift consisted of two hours inspection and six hours repairs on diesel switcher 1162.

Rogers was not qualified to do this work (see letter of general superintendent of motive power to general chairman machinists' committee dated February 27, 1940, filed as "Employees' Exhibit No. 1"), while the man used (Dunsmore) was a qualified rail motor car maintainer and had had considerable experience on diesel locomotives.

There is no rule of agreement of April 1, 1937 which states that the senior machinist with a regular assignment shall be used in place of some other regular assigned man who is off.

There is no rule, or agreed upon interpretation, that pays any man time and one-half **when he performs no service whatever**, as in this case.

Rule 3 says **"work performed."**

Rule 4 (a)—**"Continuous service** after regular bulletined hours will pay time and one-half."

Rule 11—3d Paragraph—**"Time and one-half for the first 8 hours of work performed."**

and so on.

Under these circumstances the carrier considers the offer made to have the case disposed of on the property was liberal. It is withdrawn as it was not accepted.

**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 "Position of Carrier" we find the following statement:

"In offering to pay Rogers one day's pay at pro rata rates we recognized that it was proper to have used a machinist from the same seniority district as the machinist whose place was vacant because he was filling in for absent assistant foreman."

The carrier obviously recognized a violation of the rules of agreement in offering to pay Machinist Rogers pro rata rate. However, in recognition of all the circumstances and the time required for service, if Rogers is entitled to any compensation he should be allowed pay at time and one-half.

#### AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1941.