

Award No. 626

Docket No. 606

2-MeC-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

MAINE CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the language contained in Rule 58 with reference to differential rate means that said differential rate shall be paid for each and every day that a machinist is assigned to I. C. C. inspection work.

Further, that the requirement to pay differential rate, does not depend on whether or not the inspection was certified on the day the inspection was performed.

That the machinists who have been assigned to I. C. C. inspections shall be compensated five (5) cents per hour above the minimum rate paid machinists, for every day they were so assigned and not so compensated since the effective date of the current agreement, and during the period said agreement remains in force.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute. The effective date of that agreement was February 10, 1938. The representation of the machinists and boilermakers, employees of the Maine Central Railroad, has since been changed from System Federation No. 80 to System Federation No. 18.

The following rule is contained in that agreement:—

Differential Rate for Machinists

Rule 58—At points where there are fifteen (15) or more engines tested and inspected each month, and Machinists are required to swear to Federal Reports covering such inspection, a Machinist will be assigned to handle this work in connection with other Machinists' work and will be allowed five cents (5¢) per hour above Machinists' minimum rate.

At points or on shifts, where no inspector is assigned and Machinists are required to inspect engines and swear to Federal Reports, they will be paid five cents (5¢) per hour above the Machinists' minimum rate for the days such inspections are made.

Autogenous Welders shall receive five cents (5¢) per hour above the minimum rate paid mechanics. (Emphasis ours.)

The practice of the carrier has been to assign an inspector to the work for a number of days and then require him to certify the inspections at a later date. The employe is then paid the differential rate only for the days that he signs the certificates.

namely, Messrs. Moran, Hodgkins, Scott and Sullivan, who were present, might be asked by you their understanding of the intent of the Parties at the time of the negotiations. This, you suggested was improper, inasmuch as all parties present were representing Labor.

Irrespective of this showing, you advised that you were to progress this matter to the Second Division of the National Railroad Adjustment Board."

Underlining of certain portions of our letter of October 7, 1940, to Mr. Davis, quoted above, is for the purpose of this case, and not shown in original letter.

The verbatim record of the entire minutes of conferences for January 12, 1938, and May 11, 1938, is now handed to the chairman for the Board's record.

In conclusion the carrier has shown—

1. On the propriety of accepting the case for adjudication:

- (a). That the agreement of February 10, 1938, was negotiated with employes designated as required by Sec. 2 Third of the Act.
- (b). That the agreement conforms in all respects to all of the requirements of Sec. 2 "General Purposes" and Sec. 2 First "General Duties" of the Act.
- (c). That Rules 27 and 28 of the agreement of February 10, 1938, are the only rules in effect between the parties prescribing how grievances, as in the instant case, should be handled.
- (d). That the employes have not complied with these rules in the instant case.
- (e). That the employes have not handled the subject matter in accordance with the provisions of the Railway Labor Act, approved June 21, 1934, as required by Circular No. 1 of the National Railroad Adjustment Board.

Therefore, the case should be dismissed.

2. On the merits of the case—

- (a). That Rule 58 of the agreement of February 10, 1938, when negotiated was agreed to require at points or on shifts where no inspector is assigned, payment of the differential to machinist inspector only on the day they sign certificates. See Mr. R. H. Moran's statement of January 12, 1938, quoted on pages Nos. 5 and 6, and President Sullivan's statement made on May 11, 1938—

"Yes, I remember it. We agreed it was understood to mean on day certificate was signed."

and Mr. Arno Scott's statement—

"Then that part of it is closed."

- (b). That the particular principle here involved was definitely and conclusively disposed of by agreement between the parties designated as required by Sec. 2, Third of the Act, and in conformity with Sec. 2 First and Second of the Act, in letter agreement dated September 30, 1938. (Carrier's Exhibit 4.)

Therefore, the case should be denied.

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 this case Rule 58, which is involved, reads as follows:

"At points where there are fifteen (15) or more engines tested and inspected each month, and machinists are required to swear to Federal Reports covering such inspection, a machinist will be assigned to handle this work in connection with other machinists' work and will be allowed five cents (5¢) per hour above Machinist's minimum rate.

At points, or on shifts, where no inspector is assigned and Machinists are required to inspect engines and swear to Federal Reports, they will be paid five cents (5¢) per hour above the Machinist's minimum rate for the days such inspections are made.

Autogenous Welders shall receive five cents (5¢) per hour above the minimum rate paid mechanics."

There being no inspector assigned to the point named, there being less than fifteen (15) engines tested and inspected each month, the second paragraph of the above rule applies, and the machinists should be paid accordingly.

AWARD

Machinists shall be paid five (5) cents per hour above the machinists' minimum rate for the days such inspections, as required by the rule, are made. This Award is retroactive only to the date the dispute was initiated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1941.