

Award No. 636

Docket No. 581

2-MeC-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

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

MAINE CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Charles Quimby should be compensated for eight (8) hours at punitive rate for machinist helper's work performed by Merrill A. Jones, January 18, 1940.

EMPLOYEES' STATEMENT OF FACTS: There was an agreement in effect between System Federation No. 80, Railway Employees' Department, A. F. of L. and the Maine Central Railroad Company. This agreement covers machinists, boilermakers, electrical workers, their helpers and apprentices. The effective date was February 10, 1938.

The machinists, their helpers and apprentices, employes of the Maine Central Railroad, changed their affiliation from System Federation No. 80 to System Federation No. 18.

Management was duly notified under date of February 25, 1939 that System Federation No. 18 would continue to represent these employes under the rules included in the aforementioned agreement, until changed in accordance with the provisions of the Railway Labor Act.

The following rules are contained in the agreement between the parties to this dispute:—

OVERTIME: SUNDAYS AND HOLIDAYS

Rule 3. All overtime continuous with regular bulletined hours will be paid for at the rate of time and one half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays or the following legal holidays, viz: Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or proclamation shall be considered the holiday) shall be paid for at the rate of time and one half, except that employes regularly assigned to work on Sundays and Holidays, will be compensated on the same basis as on week days. Sunday and holiday work will be required only when essential to the continuous operation of the Railroad.

Rule 4 reads in part:—

The fact that this rule is still in effect and lived up to as occasion requires, is still further proof of the validity of our position.

In the dispute here involved, Rule 35 (a) was not controlling due to the specific understanding arrived at on March 18, 1938, and outlined in carrier's Exhibit A, which provided for such extra work to be given to furloughed Electrician Jones. This arrangement was made at the specific request of the president of System Federation No. 80 to help provide a living for an employe whose own field did not permit of full time employment.

In conclusion it must be recognized—

1. There is **no** rule in the agreement that contemplates or requires that an employe holding a regular assignment must be called to fill day to day vacancies.
2. To the contrary, the practices under the rules in effect restrict such handling except in emergency.
3. During conference negotiations leading up to conclusion of current agreement, representatives of the employes and carrier were agreed that furloughed employes of the classification in which the vacancy occurs, had preferred rights to such work, and in the absence of such furloughed employes the carrier had the right to fill such vacancies with available qualified men.
4. The agreement entered into March 18, 1938, between the representatives of System Federation No. 80 and the carrier, providing for such spare work as there might be in the helper's field (not covered by furloughed helpers) be given to furloughed Electrician Merrill Jones, is definite proof of the mutual understanding between the Parties of the rules and the practices in effect under the rules.
5. Request of present general chairman on January 13, 1940, that restrictions be removed from Machinist Helper Harry A. Sanborn to permit him to fill temporary mechanic's vacancies, and the fact that restrictions were removed and Mr. Sanborn did fill such vacancies on twenty-six (26) days during the period April to October, inclusive, 1940, is definite recognition of the carrier's position that day to day vacancies may be filled by other than regular assigned forces in the class.
6. Rule 35 (a) of agreement between the Maine Central Railroad Company and the Brotherhood of Railroad Station Employes, dated February 17, 1930, which is still in effect, and which provides that as opportunity permitted, engine house laborers with fitness and ability were to be given preference in filling vacancies in helpers' positions in districts where employed, is still further definite proof of the understanding of the rules and practices in effect under the rules.
7. For the foregoing reasons, and the fact that Charles Quimby was relieved from work on Thursday, January 18, 1940, as required by provisions of Rule 8, quoted in the carrier's statement of facts, claim 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.

Under the agreement of February 10, 1938, assignment of a furloughed electrician to machinist helpers' work was improper. When System Federation No. 18 replaced System Federation No. 80, the carrier impliedly revoked whatever rights it might have under the supplemental agreement of March 18, 1938, by Mr. Rolfe's statement to representatives of System Federation No. 18. It is unnecessary to argue further.

AWARD

Charles Quimby to be compensated for eight hours at punitive rate for machinist helpers' work performed by Merrill A. Jones.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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