

Award No. 650

Docket No. 673

2-T&P-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the carrier at Marshall, Texas, since January 23, 1941, is violating provisions of Rule 2 (b) by the payment of only straight time to Machinist J. W. Faulk for his Sunday and holiday service.

(b) That Machinist J. W. Faulk be compensated at the rate of time and one-half for each Sunday and each holiday which he has worked since January 23, 1941.

EMPLOYES' STATEMENT OF FACTS: On January 16, 1941, the carrier at Marshall, Texas, bulletined a seven-day millwright job in the car department and on which Machinist J. W. Faulk bid, who, at the time, was operating a wheel boring mill.

On January 23, 1941, the carrier assigned Machinist J. W. Faulk to said millwright job but had required him to continue operating the wheel boring mill. For Sunday and holiday service, the carrier has compensated Machinist J. W. Faulk at the straight time rate of pay.

POSITION OF EMPLOYES: On January 16, 1941, in accordance with Rule 10, current agreement, the local management at Marshall, Texas, posted the following bulletin: "Bids will be received for machinist on seven day millwright job in car department machine shop." Over the signature of Mr. T. E. Anderson, general car foreman. On January 17, 1941, Machinist Faulk wrote Mr. Anderson: "Please consider this as my application for millwright job, your bulletin January 16." (Exhibit B.)

On or about February 13 and March 5, 1941, a conference was held with Car Foreman Anderson and the chairman of the local shop committee wherein the matter was discussed at some length concerning this assignment and an agreement could not be reached; however, it was pointed out that it was the contention of the committee that this seven day assigned millwright job was apparently not needed for the reason that after the assignment Faulk was required to operate a boring mill on which he had formerly worked for a long period of time and due to the fact that this millwright job had been worked by other parties on a six day basis successfully. By this assignment in the aforementioned manner it had the appearance of being a dual job and management then refused to bulletin the boring mill job, all of which tended for the obvious purpose of evading the payment of time and one-half rates for Sunday and holiday work. Foreman Anderson agreed to look into the matter further although after a reasonable length of time

of facts, as well as in Mechanical Superintendent Prendergast's letter of June 11, above quoted, is necessary for the continuous operation of the railway in order to take care of the repairing of machines, which cannot be repaired during the week without putting the machines out of operation and which would necessitate permitting the operators to remain idle or sending them home and would seriously interfere with the output of the shop work. Machinist Faulk was regularly assigned to the work by bulletin as provided by Rule 2 (b) and claim for pay at the rate of time and one-half for service performed on Sundays cannot be justified by the schedule or from any other viewpoint.

The employes' contention, as we understand it, is that since the millwright is not kept fully occupied doing this work during the week he should not have been assigned at straight-time rate on Sundays and holidays.

Your Board will understand that it would not be practicable to allow the millwright to clean and work on shop machines when they are being used to capacity by other mechanics.

The carrier has the right to require machinists assigned to such positions to perform other duties coming under the machinists' classification.

Rule 2 (b), on which the committee relies, plainly states that millwright gangs will receive straight-time rates for Sunday and holiday work.

Your Board has ruled on an identical case to the one now at issue on the Illinois Central Railroad denying claims of employes, to which attention is called, your Board's Award 88, wherein it ruled in its findings in part:

Rule 3 of agreement permits the assignment of "millwright gangs" to work Sundays and holidays at straight time rate of pay. The assignment must be made by bulletin to work all Sundays and holidays.

The assignment in the case now before the Board was made strictly in accordance with the findings of your Board as expressed in Award 88, above quoted.

Your Board then ruled:

Prior to time assignment of machinist was made as per above findings, time and one-half will be paid for Sundays or holidays worked. After assignment of machinist was made as per above findings, straight time will be paid for Sundays and holidays.

The findings of your Board and its award in that case would deny the case now at issue.

Rule 3 of the Illinois Central is verbatim to our Rule 2, paragraphs (a) and (b).

We did not first assign the millwright to seven days and then bulletin position, but instead handled strictly in line with the findings of your Board in its Award 88 by first bulletining the position as a seven day assignment and then made effective.

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.

It is proper to assign a man, under the terms of the agreement, to do such "millwright" work as is necessary to be done.

It is also proper, under the terms of Rule 2 of the agreement, to assign that man to do "millwright" work on Sunday and holidays.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1941.