

Award No. 726

Docket No. 695

2-CI&L-MA-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: (a) That Rule 60 of agreement, dated July 1, 1926, includes maintenance of gas engines as machinists' work.

(b) That the carrier is violating Rules 30, 31, 59 and 60 of agreement, dated July 1, 1926, by using other than machinists to perform the maintenance and repair work on gas engines.

(c) That furloughed Machinist Charles Neal, by the terms of agreement dated July 1, 1926, is entitled to perform the work of maintaining gas engines; that he be assigned thereto and until so assigned, he be compensated at 85¢ per hour for all straight time lost and for all overtime worked on said job by other employes than machinists at the rate of \$1.25½ per hour, retroactive to December 1, 1937.

EMPLOYES' STATEMENT OF FACTS: On June 25, 1937, this claim that the maintenance of gas engines was machinists' work was submitted to the National Railroad Adjustment Board, Second Division, hereinafter referred to as the Board. The claim was set down for hearing and held on July 13, 1937. Under date of July 21, 1937, the Board issued Award No. 170, Docket No. 187. The Board in said award under its caption "Findings," states in part the following:

- (a) "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."
- (b) "Under the terms of this rule, (Rule 60), the maintaining of gas engines in this dispute is the work of machinists."

The Board in said award under the caption "Award," simply said:

"Claim Sustained."

The Board issued an Order directed to the Carrier, also dated July 21, 1937, and which states, in part, the following:

"The Chicago, Indianapolis and Louisville Railway is hereby ordered to make effective Award No. 170 . . . on or before August 15, 1937."

ment. Of other gas engines the preponderance are in the maintenance of way department. The work performed by the machinist in the maintenance of way department, from December 1, 1937 to September 1, 1941, in repairing gas engines amounted to five and one-half percent of his total time.

Supplement No. 4 to General Order No. 27 (effective January 1, 1918) provided rates of pay for mechanics in the mechanical departments of railroads under Federal Control. This supplement, and interpretations thereto, ordered that the rates specified therein be applied to mechanics in other departments. The rate of pay established for machinists by Supplement No. 4 was applied to the machinist making repairs to gas engines of motor cars and other gas propelled equipment. Numerous decisions of Railway Board of Adjustment No. 2 and the United States Railroad Labor Board were to the effect that rates specified in Supplement No. 4 must be applied to employes of the same crafts in other departments, but that the employes performing the service were not disturbed, nor should the work be removed from the department. Under the National Agreement (effective October 20, 1919) the same rulings were applicable as under Supplement No. 4, and subsequent to the National Agreement there have been no decisions or awards changing the orders and rulings theretofore made with respect to such employes.

In a case before the First Division, Referee Corwin speaking for the Division made the following statement:

“There is and can be no stronger indication of what interpretation this Division in any case of doubt should adopt than that which the parties have given a rule, and a practice, uncontested over a period of years, must justly be regarded by each party as indicating the course of conduct for it to follow. * * * the Carrier in the disputes we are now discussing has just as much right to rely upon an accepted interpretation as the committee had * * *, and we cannot disregard an uncontroverted custom of twenty years.”

As shown herein by the carrier, a machinist in the maintenance of way department has always maintained and repaired these gas engines; therefore, for some twenty-five years there has been no question about the right of the carrier to have him perform this service. There can be no question with respect to the interpretation placed upon the rules by the carrier and organization, for the reason that the occupancy of the position by the incumbent machinist was uncontroverted for many years, thereby establishing the fact that the rules were properly applied.

The carrier submits:

1. There has been no violation of Rules 30, 31, 59 and 60, or any other rules of shop craft agreement, dated July 1, 1926.
2. The carrier is not using other than machinists to perform the maintenance and repair work on gas engines.
3. That the employe performing the work of maintenance and repairs to gas engines is a qualified machinist.
4. That the claim of Charles Neal is null and void and has no standing in the instant case.
5. An award should be rendered in favor of the carrier.

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.

The question which confronts us in this record is the identical same question which this Board decided in Award 170 involving this same carrier, in which this Board found that the maintenance of gas engines is the work of machinists. It is hard for this referee to understand why this dispute was not settled on the property as it is clearly controlled by Award 170.

The Machinist Charles Neal is entitled to be compensated for all time lost due to machinist's work performed by J. J. Foley, retroactive to December 1, 1937.

AWARD

Claims (a) and (b) sustained; claim (c) sustained as per findings; Machinist Neal to be compensated for all time lost due to machinist's work performed by J. J. Foley.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.