

Award No. 761

Docket No. 710

2-NYC-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. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Rule 4 (b) of the piece work addendum to the agreement has been violated account of not paying the average straight time rate to Machinist Wm. A. Gamble, a regularly assigned turret lathe operator, for his services performed during the period of January 2 to and including February 10, 1941.

JOINT STATEMENT OF FACTS: On December 31, 1940, turret lathe 193 (regularly operated by Machinist Gamble), was removed from the locomotive shops at Collinwood, Ohio, and on January 2, 1941, a more modern machine, 5146, was installed in its place.

During the period January 2, 1941, to and including January 23, 1941, Mr. Gamble was assigned to operate turret lathe 3641, upon which no piece work was available, and on January 24 to and including February 10, 1941, he was assigned to operate the new machine 5146. Time studies were started on this latter machine on February 11, 1941.

During the period January 2, 1941 to and including February 10, 1941, Mr. Gamble was paid at his hourly rate of 86¢.

POSITION OF EMPLOYEES: It is our position that management violated the provisions of Rule 4 (b) of the piece work addendum to the agreement, which clearly specifies that men prevented from working piece work on account of lack of tools, material or any causes other than those subject to their control will be paid for such time at their average rate received for straight time for the preceding pay period and will perform such work as may be assigned to them by the foreman.

Machinist Committeeman Wm. A. Gamble, who was a one-hundred percent piece worker from September 11, 1940 to December 30, 1940, with an average hourly rate of one dollar and forty-two cents (\$1.42) per hour as a piece worker had no control over his assignments, when on the morning of December 30, 1940, as a regular operator of machine 193, was instructed to set up his machine to make crosshead shoe bolts on L. O. 12486. At 9:30 A. M., after finishing fifteen of these bolts, he was instructed by his foreman to break up on this job and set up his machine to make reverse shaft tie bolts, Drg. T-70233-B for which no piece work price was available. Machinist Gamble questioned this change, knowing that he was a one-hundred percent piece worker and that Machinist Chas. McGinley, who regularly operates turret lathe 3641, had this same job set up on the turret lathe he

provision of Interpretation (5), whereas on the other, their claim of a deliberate attempt to destroy Gamble's ninety-five percent piece worker status, is an admission that they consider the ninety-five per cent piece worker provision of the interpretation pertinent to the case.

Although the carrier has been unable to confirm the allegation of discrimination in the premises, in order to dispel any doubts that such was the case, a compromise settlement was offered the employes, without prejudice to the future application of the rule, whereunder Gamble would be allowed his average rate received for straight time for the preceding pay period for the day work performed during the first half of January.

The employes declined to settle the case on this basis.

4. THE NATIONAL RAILROAD ADJUSTMENT BOARD, SECOND DIVISION, SHOULD DENY THE CLAIM OF THE EMPLOYES:

It has been shown that Gamble was paid in accordance with provisions of the agreement between the carrier and the employes represented by System Federation No. 103, Railway Employees' Department, A. F. of L., and the claim, therefore, 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.

There is no dispute in the facts. The case is submitted on a joint statement. Machinist Gamble was a regular piece-worker. He was prevented from continuing work as a regular piece-worker because of lack of tools, a matter over which he had no control. The rules on piece-work and the agreed-to interpretations justify the allowance of the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of April, 1942.