

Award No. 771

Docket No. 707

2-ACL-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. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the work developing on second shift at Montgomery enginehouse—3:30 P. M. to 12:00 midnight—April 30 and May 1, 1941, account of Riley Stokes, machinist helper, being absent from duty, was work properly belonging to regularly assigned machinist helpers at that point.

That Charlie Jones, senior six-day assigned, first shift machinist helper—7:00 A. M. to 3:30 P. M.—be compensated at overtime rate, a total amount of \$14.40, for time worked by Laborer A. R. Seymour in filling the vacancy created by absence of Riley Stokes, machinist helper, April 30 and May 1, 1941.

EMPLOYES' STATEMENT OF FACTS: Bulletined hours established for the force employed in enginehouse at Montgomery, Alabama, are from 7:00 A. M. to 3:30 P. M. and from 3:30 P. M. to 12:00 midnight, constituting a first and second shift of forty-eight hours each per week. A part of the force is regularly assigned by bulletin to also perform work on Sundays and holidays, protecting work absolutely essential to the continuous operation of the railroad.

The above named claimant, Charlie Jones, is employed on the first shift as was also Laborer Seymour on date of April 30, 1941, Seymour's hours being the same as Jones'—7:00 A. M. to 3:30 P. M. Machinist Helper Riley Stokes is assigned to second shift, 3:30 P. M. to 12:00 midnight, six days per week, with additional assignment for protecting work on Sundays and holidays.

Riley Stokes was absent from work on the afternoon of April 30. The enginehouse foreman, Mr. P. M. King, assigned Laborer Seymour to fill his place, commencing at 3:30 P. M. at completion of his regular eight-hour first shift assignment. Helper Stokes remained absent from work through May 1 and Laborer Seymour was again used to fill his regular eight-hour assignment on that date.

The local chairman was not consulted in the matter of filling vacancy created by the absence of Helper Stokes. However, upon learning that management had elected to use a laborer in filling the vacancy, he immediately protested such assignment to the enginehouse foreman, Mr. P. M.

Carrier contends there has been no violation of the agreement. Therefore, respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

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 carrier violated the current agreement in the manner in which it filled the vacancy for which claim is made, by using a laborer instead of a helper.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of May, 1942.