

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER & RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Machinist R. F. Marsh be compensated at his own rate of 84 cents per hour for time traveling and filling temporary vacancy of Foreman F. W. Green at La Veta, Colorado, in accordance with the controlling agreement dated November 1, 1935.

EMPLOYEES' STATEMENT OF FACTS: Machinist R. F. Marsh appears on the seniority roster at Alamosa, Colorado, with a date of February 5, 1928, and his hourly rate is 84¢. During the time that he was on furlough on the account of a reduction in the working force, he was notified by the general foreman on December 4, 1939, to report for service at La Veta, Colorado, to temporarily relieve Foreman F. W. Green who receives a monthly salary of only \$245.00 for all services rendered.

He departed from Alamosa, Colorado, at 9:45 P. M. on December 4, 1939, and arrived at La Veta at 12:45 A. M. on December 5, 1939, and immediately reported to Foreman Green, who then instructed him to report at 8:00 P. M. on December 5, and remain on duty until 12:00 o'clock noon, as indicated by employes' Exhibit (A).

This assignment continued throughout December 5, 6, 7, 8, 9, 10 and until 12:00 o'clock noon December 11, 1939, at which time, Machinist Marsh worked sixteen (16) hours continuous time each day for which he was compensated on the basis of only \$245.00 per month.

The employes' claim has been denied by the carrier for the reason as indicated in the employes' Exhibits (B) and (C) notwithstanding the fact that he was subsequently required to fill similar temporary vacancies which were favorably adjusted after many months, namely,

Called on January 7, 1940, to April 23, 1940, at Alamosa, Colorado, to fill the temporary vacancy of Machinist Ford Ginn.
(See Employes' Exhibit 1.)

Called on May 6, 1940, to May 13, 1940, to Chama, N. M. to fill the temporary vacancy of Foreman B. F. Shenfield.
(See Employes' Exhibits 1, 2, 3.)

Called on May 17, 1940, to May 30, 1940, to Santa Fe, N. M. to fill the temporary vacancy of Foreman Elmer Shoemaker.
(See Employes' Exhibits 1, 4, 5.)

home and place some water in the boiler of locomotive. However, this requires but a few minutes of his time. The carrier holds that if Mr. Marsh worked sixteen hours a day while filling the temporary position of foreman at La Veta it was absolutely unnecessary.

Mr. Marsh was paid the foreman's rate of \$245.00 per month in this particular instance for the reason he was not regularly employed and was on the furloughed list when he was offered and accepted the job. This rate, however, is greater than eight hours per day or 84 cents per hour (Marsh's hourly rate).

The carrier contends that Mr. Marsh when offered the temporary job of foreman at La Veta knew what the working conditions were as well as the rate of pay. There was no rule in the agreement that made it necessary to send Mr. Marsh to La Veta to fill this temporary vacancy of foreman, a position which does not come within the scope of the Shop Craft's agreement. It could just as well have been filled by one of the foremen or assistant foremen from some other point.

This temporary vacancy was offered to Mr. Marsh primarily for the reason he was laid off and the carrier contends in view of all the circumstances, Rule 31 of the agreement of November 1, 1935, which reads:

FOREMANSHIP—FILLING TEMPORARILY

Should an employee be assigned to temporarily fill the place of a foreman, he will be paid his own rate, straight time for straight time hours, and overtime for overtime hours, if greater than the foreman's rate. If not, he will receive foreman's rate.

has no application to the instant claim and it 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.

The evidence of record supports the conclusion that the circumstances of this proceeding are expressly covered by the provisions of Rules 10 (a) and 31 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.