

Award No. 847

Docket No. 826

2-B&M-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: That Frederick T. McGrath, machinist, must be compensated for eight hours at punitive rate for machinist work performed by Machinist Helper E. Richardson on November 21, 1940.

EMPLOYES' STATEMENT OF FACTS: George Southgate is a machinist, employed on the day shift at the new Boston terminal. He works in the washout section of that shop and performs the work required on air brake equipment when locomotives are in for periodic tests as per Interstate Commerce Commission regulations.

Mr. Southgate was absent from work on November 21, 1940, and Machinist Helper E. Richardson was assigned to make repairs and tests to air brake equipment usually performed by Mr. Southgate.

Machinist Fred T. McGrath, who is employed on air brake work on the 11:00 P. M. to 7:00 A. M. shift and who was available to fill the place of Southgate on November 21, 1940, presented a claim for compensation for eight hours at time and one-half rate. The Carrier declined the claim.

POSITION OF EMPLOYES: For a long period of time the employes have been trying to stop the assignment of helpers to mechanics' jobs. We were unable to do so by handling on the property and therefore, the machinists advanced four disputes to the National Railroad Adjustment Board. The federated crafts advanced a comparable case involving all crafts.

Following are the awards and docket numbers:—

Award 564—	Docket 559
" 565	" 580
" 566	" 586
" 567	" 588
" 568	" 595

All of the above mentioned awards ruled against the use of helpers on mechanics' work. While these cases were pending before the Adjustment Board, the improper practice still prevailed.

The instant dispute is the result of not only the assignment of a helper to machinist work but also of dividing that work with a mechanic of another craft.

So much of the work usually performed by Southgate was performed by Sheet Metal Worker Robertson on the day in question, that it was the opinion

POSITION OF CARRIER: Frederick T. McGrath, the claimant in this case, had a regular assignment as machinist, as shown in the statement of facts, and he covered that assignment on November 21, 1940, so he was not considered available to cover the Southgate vacancy and a helper who was qualified did cover it.

We now understand the interpretation of the Second Division of the National Railroad Adjustment Board of Rule 26 of the agreement of April 1, 1937 as contained in Award No. 565, dated February 14, 1941 and received February 17, 1941, as follows:—

“There is no agreement in effect providing for ‘setting up’ of Helpers, i. e.—promoting or advancing Helpers to positions of Mechanics either temporarily or permanently. If such an agreement is made, it must be made by the same representative authorities that negotiated the schedule of rules. Mechanics may, of course, be employed as such under the provisions of the agreement but when so employed seniority as Mechanics starts as per the provisions of the agreement.”

The same findings by the Board occur in Awards 566 and 567, both of which were claims for eight (8) hours at punitive rate for machinists' work performed by helpers, and both of which claims, while sustained as to violation of Rule 26 of the agreement of April 1, 1937, denied claim for compensation and as this case of McGrath occurred in November, 1940, several months before receipt of Awards 566 and 567 from the Second Division of the National Railroad Adjustment Board the management took the position that there should be no penalty payment in the case of McGrath any more than in the cases of those covered by Awards 566 and 567.

If the case had occurred subsequent to receipt of Award No. 565 from the Board, we would have considered the claim in order and paid it as we have paid several others where Rule 26 as interpreted by the Second Division in Award No. 565 was violated since February, 1941.

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 waived right of appearance at hearing thereon.

This Division in its Award Nos. 565, 566 and 567, sustained like claims of violation of the rules of agreement involved, but denied compensation. The instant dispute comes before the Division more than six months following rendition of these awards in view of which this claim should be sustained in its entirety.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of October, 1942.