

Award No. 855

Docket No. 790

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 Machinist Helper Webber should be compensated at time and one-half for machinist helper's work performed by Car Repairman Morris Atkins, March 17, 1941.

That Machinist Helpers Edwin Stevens and Edward E. Dow should be compensated at time and one-half for machinist helpers' work performed by Car Repairman Atkins, as follows: March 20th, Atkins assigned, Stevens claimed compensation, April 11th and 15th, Atkins assigned, Dow claimed compensation.

EMPLOYES' STATEMENT OF FACTS: Morris Atkins is employed at the new terminal enginehouse, Boston, and is shown on the seniority list as a car repairman.

On March 17, 1941 there was a one day vacancy on the 7:00 A. M. to 3:00 P. M. shift as a machinist helper. There was no machinist helper available to fill that vacancy without doubling a man over and Atkins, who had no assignment that day, was used to fill the vacancy.

Kenneth Webber, holding a regular assignment as machinist helper, working from 11:00 P. M. to 7:00 A. M., claimed that he should have been used and paid time and one half for filling vacancy from 7:00 A. M. to 3:00 P. M. The committee sustained the claim of Webber but the management declined payment. There are only three carmen's jobs which have to be covered seven days a week in this seniority district and at the time of this claim, Atkins relieved one of these carmen on Sunday, another on Wednesday and a third on Thursday.

The claim has been progressed in accordance with the rules of the agreement of April 1, 1937 between the parties and may properly be advanced to the Second Division of the National Railroad Adjustment Board.

POSITION OF EMPLOYES: The above statement of facts was approved by the carrier as shown in employes' Exhibit O. Since that approval, we have substituted the words "time and one half" for the word "punitive."

At the new terminal enginehouse, where the violation which we protest took place, there are **one hundred machinist helpers** employed on three shifts. While there were no furloughed machinist helpers at the time covered by this grievance, there were enough helpers employed to handle all the work of that classification at the point.

Morris Atkins, car repairman, performed work covered by Rule 50, which shows work classified as machinist helpers' work, for an eight hour period on March 17 and 20, April 11 and 15.

16, 1940, regarding the assignment of men of their craft we received a grievance from General Chairman Davis (Claim MA 111) dated April 18, 1941, alleging that Morris Atkins, a carman employed at the new Boston terminal enginehouse had been used as a machinist helper on March 3, April 11, and 15, 1941, and claiming eight hours at time and one-half for not doubling over Machinist Helper Edwin R. Stevens and Edward E. Dow.

We submit as carrier's Exhibit No. 11, a copy of letter and grievance submitted by General Chairman Davis addressed to Mr. I. C. Blodgett, supervisor of schedules, under date of April 18, 1941.

Under date of May 17, 1941, General Chairman Davis wrote Mr. A. H. Slader, assistant general manager, regarding this case. A copy of this letter is submitted as carrier's Exhibit No. 12.

Machinists and machinist helpers have for a long time been assigned to cover carmen and carman helper's jobs. In fact machinist helpers have been used as carman helpers for years up to the time General Chairman McGown registered his complaint on February 10, 1941.

It has been a practice over a period of years to interchange work between machinists, carmen and their respective helpers at the new Boston terminal enginehouse and when the general chairmen of the crafts involved reached an agreement as to how they desired the matter settled we immediately corrected the condition.

In this particular case General Chairman Davis of the machinists' committee is claiming time because Machinist Helpers Webber, Stevens and Dow were not doubled over to cover machinist helper vacancies on March 3, April 11, and 15, 1941, but overlooks the fact that machinist helpers have been covering carmen and carmen helpers jobs and machinists covering carmen jobs for several years.

We claim it is just as proper to use a carman to cover a machinist helper's vacancy as it is to use a machinist helper to cover a carman's vacancy.

We agree that this long established practice is not in accordance with the rules and we discontinued it in July, 1941, except in the case of L. W. Huntington, a machinist helper who was assigned to cover the job vacated by Carman Morris Atkins in September, 1941, by approval of the general chairman of carmen's committee. The classification of this machinist helper was changed to car repairman January 4, 1942.

We do not think it is fair for the general chairman of the machinists' committee, after making his request on March 10, 1941, to defer any action in this matter until such time as he and General Chairman McGown of the carmen's committee reached an understanding and then before their negotiations were completed to present a grievance and time claim regarding the unsatisfactory conditions at issue which we immediately corrected upon receiving notice of an understanding having been reached between General Chairmen Davis and McGown as to how they wished the matter disposed of.

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.

The practice which caused the instant dispute may be followed only if agreed to through negotiation, as the agreement does not so provide. How-

ever, no negotiated agreement being in evidence, and since it appears that such practice was condoned by accredited representatives of the employes in a number of previous instances, the claim for compensation must be denied.

AWARD

Claim for discontinuance of the practice is sustained.

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1942.