

Award No. 921

Docket No. 804

2-ACL-MA-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That carrier violated the terms of Rule 3 of the current working agreement in assigning the work of R. F. Hewlett and Henry Oliver, machinist and machinist helper, respectively, on Sunday, August 24, 1941 at Wilmington Enginehouse, Wilmington, N. C.

That O. E. Eldridge, senior six-day assigned machinist, and H. A. Topel, senior six-day assigned machinist helper, be compensated at time and one-half rate for the eight hours' service required of R. F. Hewlett and Henry Oliver to perform work on Engine No. 1021, Sunday, August 24, 1941, because of such work not being "absolutely essential to the continuous operation of the railroad" within the meaning of Rule 3 of the agreement.

Total compensation involved amounts to \$10.44 and \$7.20, respectively.

EMPLOYEES' STATEMENT OF FACTS: There are fifteen machinists, approximately sixteen machinist helpers, and two machinist apprentices regularly employed in the carrier's enginehouse at Wilmington. There are two established shifts, one day and one night, from 7:00 A. M. to 3:30 P. M. and from 8:00 P. M. to 4:30 A. M.

The four employees named in the foregoing claim are regularly employed on the daylight shift. R. F. Hewlett and Henry Oliver are regularly assigned to perform work on Sundays and holidays, in accordance with the provisions of Rule 3, subsequent to bulletin posted at Wilmington on December 27, 1940, reading:

BULLETIN

Machinists and Machinist Helpers:

By the terms of the Agreement, dated November 11, 1940, Rule 3, bids will be accepted for the following Running Repair and Inspection Forces to work on Sundays and holidays (7-Day Assigned).

First Shift

- 1 Machinist qualified to perform air brake work on Locomotives and Tenders and sign Federal Locomotive Inspection Forms.
- 1 Machinist qualified to inspect and sign Federal Locomotive Inspection Forms.
- 2 Machinists.
- 4 Machinist Helpers.

important work to be done at the time given to Machinist Hewlett and Machinist Helper Oliver.

Carrier is showing affidavit from Mr. E. B. Lewis, boiler foreman, who was acting roundhouse foreman, August 24, 1941, wherein he states, "On that date nor since that date have I had any claim or complaint about the assignment of work," as Exhibit A.

Also submitted is affidavit from Mr. A. H. Williams, master mechanic, as Exhibit B, wherein he states, "The first time this matter came to my attention, Mr. G. F. Sellers, Local Chairman for Machinists, brought a letter to my office dated September 26, 1941," and "that the Sunday and holiday forces are kept to a minimum to perform work absolutely essential to the continuous operation of the railroad."

We must give consideration to points similar to Wilmington roundhouse in the assignment of forces as it is absolutely necessary that we have sufficient equipment to meet the requirements of the service and, in addition to the regular seasonal business, there are necessities for movements requested for armed forces, and, in the assignment of forces, this must be taken into consideration, because, there are times when only a short notice is given for these movements.

Carrier contends the rules of the agreement have not been violated and respectfully requests the National Railroad Adjustment Board to deny this claim.

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.

In so far as it relates to this dispute Rule 3 (c) provides that Sunday and holiday work will be confined to running-repairs and will be required only when absolutely essential to the continuous operation of the railroad. Under the facts of record and awards of this Division construing agreement provisions similar to Rule 3 (c) it is found that the work required of Machinist Hewlett and Helper Oliver on Sunday, August 24, 1941, was not running repair work absolutely essential to the continuous operation of the railroad. See Awards 800, 195 and 159.

No support is found in the rules for the claim of Machinist Eldridge and Helper Topel. We believe a reasonable construction of the said Rule 3 to be that if seven day assigned men are required to perform work on Sundays and holidays other than the work specifically named in Rule 3 (b) which is absolutely essential to the continuous operation of the railroad, then such employes should be paid the punitive rate provided in the rule, viz., time and one-half.

AWARD

Claim sustained in so far as it is found that the carrier violated Rule 3 (c) of the agreement, but denied as to compensation for O. E. Eldridge and H. A. Topel.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1943.