

Award No. 938

Docket No. 865

2-ACL-MA-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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 H. E. Frederick, machinist, Montgomery, Alabama, be compensated at the rate of time and one-half provided in Rule 3 (b) for work performed on third shift, Sunday, September 13, 1942, in the amount of \$3.88.

EMPLOYEES' STATEMENT OF FACTS: Three shifts of machinists are regularly employed in the carrier's enginehouse at Montgomery, Alabama. Twenty-four hours of service are thus provided and to include Sundays and holidays. Sunday and holiday assignments are established by bulletin as provided in Rule 3 (b). The rate of pay established for machinists amounts to 97¢ per hour.

Machinist Frederick is regularly assigned to the first shift, 7:00 A. M. to 3:30 P. M., six days per week. He worked his regular assignment on September 11, 1942, and was on that date changed to the third shift for the purpose of protecting vacancy created by the resignation of Machinist G. A. McCain. McCain was regularly assigned by bulletin to work on Sundays and holidays. His vacated assignment was bulletined on date of September 10.

Machinist M. B. Johnson, employed on the second shift, was the only bidder for the third shift vacancy and was therefore assigned to same effective September 15, 1942. Frederick was thus released as of that date for return to his first shift assignment from which temporarily removed on September 11. He was compensated at the overtime rate provided in Rule 9 for changing shifts both on September 11 and 15, 1942, but denied the rate of time and one-half provided in Rule 3 (b) for work performed on the third shift as of Sunday, September 13, 1942.

POSITION OF EMPLOYEES: It is shown in the foregoing statement of facts that Machinist H. E. Frederick was changed from the first to the third shift on September 11 for the purpose of temporarily filling a vacancy created by the resignation of Machinist G. A. McCain. The respective assignments of Machinists Frederick and McCain are also described and to develop the fact that McCain was regularly assigned by bulletin to work on Sundays and holidays.

The position is taken that Frederick's service on the third shift was only temporary and, therefore, subject to all the provisions of both Rules 9 and 3. The bulletins of record and referred to above will substantiate this position and are submitted as Exhibits A and A-1. The same were posted in accordance with Rules 12 (b) and 3 (b), respectively, subsequent to the resignation of Machinist G. A. McCain. The bid of the only applicant, M. B. Johnson, is submitted and marked Exhibit B, followed by a letter from the carrier's superintendent motive power, Mr. James Grant, marked Exhibit C.

McCain, worked seven days per week, including Sundays and holidays, this being essential for the continuous operation of the railroad, as specified in paragraph C, Rule 3 of the agreement, which reads as follows:

(c) Sunday and Holiday work will be confined to the operations specifically named above and will be required only when absolutely essential to the continuous operation of the railroad.

When Machinist Frederick was placed on this job, he therefore came in the category of employees working under Rule 3, paragraph B, of the agreement, the last section of this paragraph reading as follows:

"... except that employees necessary in the operation of power houses, millwright gangs, heat treating plants, train yards, running-repair and inspection forces who are regularly assigned by bulletin to work on Sundays and Holidays will be compensated on the same basis as on week days."

It is the contention of the carrier that the agreement was properly complied with when the youngest available machinist, H. E. Frederick, was placed on the seven-day job vacated by Machinist McCain. The agreement was carried out in every respect by paying this man overtime rates for the first day on which he changed his shift and the carrier contends that, inasmuch as no older employees bid in this shift, Machinist Frederick was regularly assigned to same until such time as he might have the opportunity to get on another shift, if he felt so disposed.

The carrier further contends that Machinist Frederick was only entitled to straight time for working the shift September 13 and that the claim for overtime rates is not justified. Therefore, respectfully requests that the National Railroad Adjustment Board 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 employees 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.

Machinist H. E. Frederick was not regularly assigned by bulletin to work Sundays and holidays as provided for in Rule 3 (b). He is entitled to time and one-half for work performed on Sunday, September 13, 1942.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1943.