

Award No. 1179

Docket No. 1103

2-IC-MA-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Helper F. E. Hagerman was improperly used as a machinist from August 4 to 15, 1945, inclusive, and that accordingly the carrier be ordered to additionally compensate Machinists John Hawkins and S. B. Barney, by equally dividing among them, at the time and one-half rate, all hours worked as a machinist during the said period by Machinist Helper Hagerman.

EMPLOYEES' STATEMENT OF FACTS: At Council Bluffs, Iowa, the carrier used Machinist Helper F. E. Hagerman to perform machinists' work on the 8 P. M. to 5 A. M. shift daily between August 3 to 16, 1945.

Machinists John Hawkins and S. B. Barney, hereinafter referred to as the claimants, were regularly employed on the 7 A. M. to 4 P. M. shift. These claimants were available to and requested the privilege of alternating daily in the interest of protecting the service on the 8 P. M. to 5 A. M. shift during the period that Helper Hagerman was assigned as a machinist on that shift. However, on August 15, the master mechanic removed Hagerman as a machinist and the claimants were assigned to protect the service on the 8 P. M. to 5 A. M. shift on August 16, 17, 18, 19 and 20. Thereafter this shift was protected by the regular assignment in accordance with the agreement.

* * * *

POSITION OF EMPLOYEES: It is a fact that during the period of August 4 to 15, 1945, inclusive, the carrier improperly used Machinist Helper Hagerman to perform machinists' work, as defined in Rule 61 of the controlling agreement.

Mr. Hagerman was regularly employed as a machinist helper and retained his seniority rights as such. However, due to the emergency he was temporarily upgraded to a machinist, under the provisions of a memorandum of agreement effective September 15, 1943, between System Federation No. 99 and the carrier. This memorandum of agreement was cancelled effective August 8, 1945, which is verified by the submitted copy of Notice to Shopmen, dated at Council Bluffs, Iowa, August 4, 1945, signed by B. E. Perrin, general foreman, and identified as Exhibit A. It will be noted that this notice provided that upgraded Machinist Hagerman would revert back to his former status as a machinist helper.

craft than to the other five crafts—yet that is what the machinists are here attempting to do as members of all crafts comprising System Federation No. 99 were and are employed thereunder on this property.

The carrier calls attention to this Division's Docket No. 297, Award No. 307, dated February 14, 1939, involving the same parties. In this docket it is said, "The employees answer that if these men were not entitled to seniority, under the general rules, the local committee and the general chairman of one of the federated unions could not change the general rules laid down for all of the crafts. The seniority rule, applicable to all employees, could not, the employees insist, be waived with respect to one of the crafts." The employees now are attempting to do what they said could not be done in the foregoing docket. The memorandum agreements (carriers Exhibits Nos. 1, 2 and 3), upon which the employees base their claim in the instant case, govern the working conditions of all the crafts comprising System Federation No. 99 on this property, and apply alike to all the crafts of the federated unions and may not be changed by the unilateral action of one craft.

The carrier maintains there is no merit to the employees' claim because—
(1) Machinist Helper Hagerman was upgraded in accord with the duly negotiated and consummated memorandum agreement effective June 16, 1941, which was superseded by one effective September 15, 1943, which could only be terminated in accordance with the provisions of the Railway Labor Act;
(2) memorandum of agreement, bearing effective date of August 20, 1945, was negotiated and consummated with the express provision that it superseded the existing memorandum agreement;
(3) helpers of the machinist and other crafts of the Federation were set up and used as mechanics, during the period covered by this claim, at many points on this railroad and no protests were presented as the result thereof.

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 Memorandum of Agreement between System Federation 99 and the carrier, effective September 15, 1943, contained a cancellation clause. It reads:

"This proposal to be in effect for the duration of emergency subject to cancellation by proper written notice by either party, or in the event of an employe being furloughed, this memorandum is automatically cancelled, in accordance with provisions of the amended Railway Labor Act of 1934.

This agreement supersedes agreement dated June 16, 1941 and is effective on and after September 15, 1943."

The management received a letter from the employees dated July 31, 1945, reading in part:

"This is to notify you that through the action of furloughing employes at Paducah Shop, the Memorandum of Agreement, of September 15, 1943 is being violated.

We therefore, serve notice that said action will automatically cancel agreement of September 15, 1943, setting back all advanced apprentices and helpers who have not finished the required time. This is to become effective August 4, 1945."

Under date of August 2, 1945, the representatives of management in a letter to the representatives of the employees state in part:

"While we do not agree the proposed action at Paducah is in violation of the provisions of the agreement of September 15, 1943, we will consider the agreement cancelled as of August 4, 1945."

It is clear that there was no dispute as to the employees' right to cancellation or that the management agreed to cancel the agreement. Had the management not agreed to cancellation and thereafter a dispute arose as to changes in the agreement, the dispute would probably have found its way to the Mediation Board rather than to the Adjustment Board.

AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1947.