Award No. 1473
Docket No. 1357
2-RyEx-MA-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

INTERNATIONAL ASSOCIATION OF MACHINISTS, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.

RAILWAY EXPRESS AGENCY, INCORPORATED

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement, Automobile Mechanic G. E. Wilson was unjustly laid off and thereby deprived of his seniority-service rights from December 31, 1949 to about June 12, 1950 at Tulsa, Oklahoma.

2—That accordingly the Railway Express Agency, Incorporated, be ordered to compensate this employe for all of the aforesaid time lost.

EMPLOYES' STATEMENT OF FACTS: The Railway Express Agency, Inc., hereinafter called the carrier, maintained at Tulsa, Oklahoma, a force of employes holding various job titles totaling about forty-two (42), in addition to one garage foreman and two (2) garage mechanics prior to December 31, 1949.

Effective December 31, 1949, the carrier made the election to lay off these two (2) garage mechanics and G. E. Wilson, hereinafter referred to as the claimant, was the senior employe on the machinists-garage mechanics' seniority roster at the point, with a dating thereon as of January 10, 1942. However, concurrently with laying the claimant off the carrier assigned another employe, namely John R. Travis, garage foreman, to take over and perform machinists-garage mechanics' work, hitherto daily performed by the claimant and he was restored to service about June 12, 1950.

This dispute has been handled in accordance with the terms of the current agreement, effective September 1, 1949, with the carrier officers from the bottom to the top and to date the carrier has declined to adjust it.

POSITION OF EMPLOYES: It is submitted, as disclosed in the above statement of facts, that the carrier unjustly dealt with this claimant and thereby deprived him of his contractual seniority-service rights in clear violation of all the fundamental principles contained in the current collective agreement, particularly the following provisions thereof:

> "Rule 1. Employes Affected. The Express Agency will recognize the right of the International Association of Machinists to make the rules with the Express Agency to govern all employes doing the

at all shops and garages excepting the so-called one man points. After an exchange of correspondence continuing to August 22, 1940, International President Brown on the latter date agreed to the preparation of a "sticker" to take the place of Rule 1 and to eliminate reference to the exchange of letters concerning the renewed understandings of December 29 and 30, 1932. Rule 1 was thereupon corrected to read:

> "**Rule 1. Employes Affected.** The Express Agency will recognize the right of the International Association of Machinists to make the rules with the Express Agency to govern all employes doing the work of Machinist, Machinist's Helper, Apprentice and Helper Apprentice, at all shops and garages of the Express Agency.
>
> Nothing in this is understood to apply to employes whose duties require them to travel from point to point, inspecting, adjusting and making petty repairs to equipment, nor does it apply to points where only one man is employed."

Thereafter the agreement with the machinists was revised effective November 18, 1940, and again on September 1, 1949, but no change in the language of Rule 1 was made in either instance.

Rule 1 must be read and interpreted as a whole. In the first paragraph it extends to the machinists' organization the right of representation to employes doing the work of machinists, machinist's helper, apprentice and helper apprentice and in the second paragraph it qualifies that representation by excepting employes travelling from point to point and points where only one man is employed. The agreement deals solely with shopcraft work, it has no relation to other express work or other express employes. So interpreted, the provision is reasonable and understandable. That is the interpretation followed consistently and continuously ever since the provision was agreed upon in 1932.

The claim here that Mechanic Wilson was unjustly laid off December 31, 1949, is wholly unsupported and is without merit and should be denied on the grounds that there has been no violation of the machinists' agreement, neither has it been shown that the understanding with respect to the so-called one man points ever contemplated or could under the respective agreements governing contemplate that the exception in the second paragraph of Rule 1 applied to a point where the Agency was represented by one man doing the work of agent, driver, clerk, etc.

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.

Prior to December 31, 1949, carrier maintained a force of employes at Tulsa, Oklahoma, totaling about 45 in number, including one garage foreman and two garage mechanics. On December 31, 1949, carrier laid off the two garage mechanics and assigned the garage foreman to perform the garage mechanic's work. Claimant was the senior garage mechanic on the Tulsa seniority roster. He contends that he was entitled to perform the work and claims pay from the date he was laid off, December 31, 1949, to the date he was restored to service, June 12, 1950. The carrier asserts that claimant was properly laid off and the remaining garage mechanic's work properly assigned to the garage foreman by virtue of Rule 1, current agreement, which provides:

"Rule 1. Employes affected. The Express Agency will recognize the right of the International Association of Machinists to make the rules with the Express Agency to govern all employes doing the work of Machinist, Machinist's Helper, Apprentice and Helper Apprentice, at all shops and garages of the Express Agency.

Nothing in this is understood to apply to employes whose duties require them to travel from point to point, inspecting, adjustment and making petty repairs to equipment, nor does it apply to points where only one man is employed."

It is the contention of the carrier that from December 31, 1949, to June 12, 1950, the garage foreman was the only employe in the Agency's garage at Tulsa, and that the words "nor does it apply to points where only one man is employed," contained in the second paragraph of the rule, authorize carrier's handling as it did. The organization, on the other hand, asserts that the words above quoted apply to points having but a single employe who might be required to perform the work of several crafts in protecting the interests of the carrier.

The organization asserts that during the negotiation of the agreement in 1932, carrier's representative, L. R. Gwyn, offered a proposed memorandum of understanding which did not contain the language "nor does it apply to points where only one man is employed." On the day following, J. J. McEntee, organization representative, advised Mr. Gwyn that it was his understanding that the agreement was not to apply to points where only one man is employed. This position was agreed to by the parties and the quoted language became a part of the agreement.

The organization contends that the purpose of the included language was to avoid jurisdictional disputes at one-man points where the one employe from necessity was required to perform the work of more than one craft. The effect of the quoted language, as we see it, was to permit the employe, if he be a machinist, to perform the work of other crafts by the simple expedient of excluding him from the machinists' agreement and, if such employe be a member of another craft performing some machinist's work, to avoid claims by machinists for being deprived of the work by the same expedient of eliminating him from the scope of the machinists' agreement. Reason certainly existed why both the carrier and the organization desired the addition of the exclusionary provision excluding the occupants of one-man points from the agreement even though he actually be a machinist doing some machinist's work.

We can find no sound reasoning supporting the interpretation espoused by the carrier. Carrier says, in effect, that the language has application where only one machinist was employed and since the garage foreman was the only employe in the Tulsa garage, he was a proper person to perform the work. The difficulty with this reasoning is that this agreement, unlike some others called to our attention, does not say that the agreement does not apply where one machinist is employed. The present rule says that it does not apply to points where only one man is employed. If it had been the intention of the parties to exclude points where one machinist was employed, it would have been a very simple matter to have said so in plain language.

While it is impossible, of course, to determine the intent of those who negotiate an agreement except by their outward manifestations of its meaning, which we must confess are fragmentary in the case before us, yet, we can see no logical basis for excluding a mechanic from the agreement at a point where many employes are working. The purpose of the machinists' agreement, as well as that of every other craft, is to cover, ordinarily, all who perform the work of the craft. We find no compelling logic for the exclusion of a machinist doing machinist's work at a place where more than one employe is employed. On the other hand, pursuasive reasons do exist for excluding points where only one man is employed. The use of the term "one man" instead of "one machinist" affords very convincing argument as to the mean-

ing intended by this provision. We are obliged to say that the proof preponderates in favor of the interpretation asserted by the organization.

We have examined the awards cited by the parties, and others as well, which have been before the Division. In most instances, we have examined the master files in an effort to properly determine their value as precedents in the instant case. We find none strictly in point although they have some bearing upon the issue here presented. It would serve no useful purpose to distinguish them on rules or facts when a cursory examination reveals that they are not controlling precedents. Among those so examined are Awards 188, 316, 984.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1951.