

Award No. 1494

Docket No. 1427

2-UP-MA-'51

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1) That under the current agreement the carrier was not authorized to assign Machinist Helper M. A. Cody to perform machinists' work July 13, 14, and 15, 1948.

2) That accordingly the carrier be ordered to compensate Machinist Carl Gwynn in the amount of eight (8) hours' pay at the time and one-half rate for July 13, and Machinist J. Free in the amount of eight (8) hours' pay at time and one-half rate for July 14 and 15, 1948.

EMPLOYES' STATEMENT OF FACTS: On July 13, 14 and 15, 1948, several machinists were on vacation and the carrier assigned Machinist Helper Cody to perform machinists' work and paid him the machinists' rate on the 4:00 P.M. to 12:00 Midnight shift, July 13, and the 8:00 A.M. to 4:00 P.M. shift on July 14 and 15, 1948.

Machinists Gwynn and Free, hereinafter referred to as the claimants, were available for service if called.

This case was handled with the designated officials of the carrier who all declined to adjust this dispute.

The agreement effective May 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that there is no provision in the controlling agreement that authorizes the carrier to assign helpers to fill machinist vacancies and perform machinists' work, however, the agreement does provide that only mechanics and apprentices are permitted to perform mechanics' work and this is supported by Rule 32, reading in pertinent part as following:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft."

Therefore, it is obvious that this helper was improperly used and this is concurred in by General Superintendent D. S. Neuhart in his letter of July 29, 1949 directed to the undersigned, which is submitted herewith and identified as Exhibit A.

local chairman. It is quite willing to accept all of the other decisions, interpretations and understandings made by its then acting local chairman. The organization wants to eat its cake and have it too.

As we have heretofore pointed out, the carrier was faced with an employe created emergency, in that for personal reasons an unexpected number of machinists were absent at Nampa and there was not available a force necessary to accomplish the required work. The carrier was faced with a problem for which there was only one solution—the one suggested by the then acting local chairman—of utilizing the next best qualified employe. The facts compel the conclusion that the local organization recognized the emergency situation and suggested and concurred in the only action which could have been taken to alleviate it.

It might be suggested and because of the very statement of claim the organization no doubt will suggest, that Machinists Gwynn and Free, claimants herein, should have been used on another shift on an overtime basis working 16 hours a day to accomplish the required work. In other words, the organization may assert that Claimants Gwynn and Free should have been allowed to "double over". This contention cannot be made in good faith, because the fact is both of these men regularly and repeatedly refused to work occasional overtime.

The Board is not faced in this dispute with a situation where local officials of the organization and the carrier attempted to make an agreement which undercuts and changes the basic and effective agreement between the parties. This is merely an isolated instance where the carrier's local official was faced with a dilemma—more properly termed an employe created emergency. The acting local chairman recognized the nature of the situation and suggested and concurred in an action which was taken by the carrier to aid and benefit both the employes and the carrier. The carrier recognizes that if the agreement or understanding had between the acting local chairman and the carrier's district foreman was of a continuing nature there could be no efficacy to such an agreement because of the main agreement between the parties. But in an isolated instance such as this no one can deny that such an understanding must be given full faith and credit by both organization and carrier.*

There is no merit to this claim and the Board should deny it.

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 the instant case the employes contend that under the current agreement the carrier was not authorized to assign Machinist Helper M. A. Cody to perform machinists' work on July 13, 14 and 15, 1948.

The record submitted by the parties indicates that Machinist Helper Cody was used to perform machinists' work on July 13, 14 and 15, 1948.

* The Board should also bear in mind that the shortage of machinists at Nampa on July 13, 14 and 15, 1948, was occasioned only by the fact that the carrier's local officer was endeavoring to get along with the employes and to co-operate with them as much as he possibly could. That situation alone called for the reciprocal co-operation of the organization.

Based on the record in this case the contentions of the employes that the agreement was violated must therefore be upheld.

On the question of compensation for Machinists Gwynn and Free, there seems to be some difference of opinion regarding certain facts in the record; the imposition of a penalty against the carrier under these circumstances is not justified.

AWARD

Claim disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1951.