

Award No. 1721
Docket No. MC-1443-73
2-PRR-I-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**H. H. MUSSER—MACHINIST HELPER—INDIVIDUAL
THE PENNSYLVANIA RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEE: That within the meaning of the controlling agreement, and specifically in regards to Regulation 4-C-2 pertaining to the distribution of overtime, the claimant Machinist Helper H. H. Musser has been unjustly dealt with by the carrier on December 18 and 19, 1951, at Harrisburg Diesel Shop, and we therefore claim he should be compensated eight hours for each of the aforementioned days at the punitive rate.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the Pennsylvania Railroad Company and the Brotherhood of Railroad Shop Crafts of America, the parties to the dispute, dated January 1, 1935, a copy of which is on file with the Board and is by reference made a part of this Statement of Facts.

H. H. Musser, hereinafter referred to as the claimant was denied the right to work overtime on the rest days of his assignment, December 18 and 19, 1951.

E. E. Wenrich, a laborer at Harrisburg diesel shop with rest days December 18 and 19, 1951, was permitted to work the position owned by the claimant.

A claim for eight hours overtime for the claimant was handled on the property of the carrier as provided for in the controlling agreement.

POSITION OF EMPLOYEES: The claimant, H. H. Musser, was permitted to absent himself from duty Monday, December 17, 1951, by the immediate supervisor. The following days, December 18 and 19, 1951, were his rest days as provided for in the applicable agreement.

The position of machinist helper owned by the claimant was worked December 18 and 19, 1951, by a laborer, E. E. Wenrich, who had no claim to the position. The days in question, December 18 and 19, 1951, were also rest days for the laborer, E. E. Wenrich. Furthermore, this laborer, E. E. Wenrich who worked machinist helper's position, owned a position coming within the confines of another agreement.

The joint submission entered into by and between the employes and carrier and later heard and discussed with the general manager is made a part of the employes' position and submitted as Exhibit A.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L., System Federation No. 152, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the use of Wenrich for the work in question was proper and in accordance with the long continued practice then in effect at the location in question, that even if the use of Wenrich was improper there has been no violation of the agreement insofar as claimant is concerned, and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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.

The parties to said dispute were given due notice of hearing thereon.

A hearing was held May 12, 1953, pursuant to this Division's Award No. 1661.

The agreement governing the employment of the claimant is between The Pennsylvania Railroad Company and International Association of Machinists, System Federation No. 152 functioning through Railway Employees' Department, A. F. of L.

Rule 7-A-2 of the controlling agreement specifies:

"When it is considered that an injustice has been done with respect to any matter other than discipline, **the employe affected or the duly accredited representative** as that term is defined in Part 1 of this Schedule of Regulations, on his behalf, **may** within ten (10) days **present the case**, in writing, to the employe's Foreman. If the decision of his Foreman, which shall be in writing, is unsatisfactory, such decision **may then be appealed by the employe affected or by the duly accredited representative, on his behalf**, to the Master Mechanic or corresponding officer. If this case is not satisfactorily adjusted, it may then be handled by the duly accredited representative with the Superintendent." (Emphasis supplied.)

Further in connection with Rule 7-A-2, quoted above, an agreement dated the 21st day of June, 1950 between The Pennsylvania Railroad Company and the International Association of Machinists, International Brotherhood of Blacksmiths, Drop Forgers and Helpers and Sheet Metal Workers' International Association, functioning through the Railway Employees' Department, A. F. of L., headed "Agreement Covering The Usual Manner of Handling Controversial Matters" provides for the usual manner of handling grievances successively with the Superintendent, General Superintendent and General Manager.

The record does not show that the instant case was handled either by the employee affected or by the duly accredited representative.

The rules of procedure of the National Railroad Adjustment Board require that "No petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

This Division has previously held in Awards Nos. 514, 1275, 1680 and 1718:

"In order that this Board might assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner."

Due to the claimant's failure to pursue the required method of presenting his grievance this Division of the National Railroad Adjustment Board is without power to pass upon his claim.

AWARD

The Second Division of the National Railroad Adjustment Board, having no jurisdiction over the petition in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1953.