

Award No. 1761

Docket No. 1692

2-GN-MA-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement other than Machinists were improperly used to make repairs to Engine No. 3386 on July 19, 1952 at Oswego, Montana.

2. That accordingly the Carrier be ordered to compensate Machinist Glenn Ellis in the amount of twenty-one (21) hours at the applicable rate, and Machinist Helper Silas Nesting in the amount of twelve (12) hours at the applicable rate.

EMPLOYEES' STATEMENT OF FACTS: On July 19, 1952, steam engine No. 3386 incurred damage to her running gear which necessitated repairs being made while on a road trip in the vicinity of Oswego, Montana. A message was relayed to the Williston, North Dakota, roundhouse indicating specifically the nature of the disablement and stipulating the necessary parts to be dispatched to Oswego to make repairs. The repair parts were removed from engine No. 3382 by Machinist Einer Wickstrom, placed on the local passenger train which leaves Williston at 9:20 A.M., and thus conveyed to Oswego for application to engine No. 3386. These repair parts included a locomotive side rod and bushing, collar plate and bolt. In addition to the parts, a wrench, bar and two files were sent. The repairs to engine No. 3386 were completed by a mixed crew including the traveling engineer who directed and participated in the work. There were no machinists in this mixed crew, therefore, the work of repairing this locomotive was performed by other than machinists.

Machinist Glenn Ellis and Machinist Helper Silas Nesting, hereinafter referred to as the claimants, employed at the Williston roundhouse, were available to be sent to Oswego to perform the work. The amount of time claimed is conservative and does not represent the time that should have been claimed; however, since it is not permissible to enlarge the claim handled on the property when coming before the Board, the monetary claim handled on the property is before this Division.

Rule 42(a) of the current agreement between System Federation No. 101 and this carrier reads:

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except Foremen at points where no mechanics are employed." (Underscoring ours.)

As set forth in carrier's statement of facts, no mechanics were employed at Glasgow, the force consisting of Foreman Bliven and four machinist helpers. Therefore, under Rule 42(a) it was entirely proper for Foreman Bliven to perform any mechanics' work of which he was capable and there can be no question as to his being qualified to perform the work required in this case as evidenced by the fact that the engine proceeded on its way after Bliven had replaced the necessary parts.

As previously stated, Glasgow is only 38 miles from Oswego and, obviously with a foreman at that terminal authorized by rule to perform mechanics' work, it was the natural and proper thing to send such foreman to the scene of the engine failure rather than to wait for a man or men from Williston 118 miles away, since it was not known when the foreman was sent out what, if any, parts would be needed. Furthermore, Oswego and Glasgow are on the Butte Division, while Williston is on the Minot Division and officers of the Butte Division would have no authority to order men out from Williston.

While it is, of course, the position of the carrier that no rule was violated in this case and, hence, no claim is payable, we direct the attention of your Board to the preposterous amount claimed even if any claim was tenable. Assuming there was no qualified employe at Glasgow (which was not the case) and it had been necessary to send a machinist from Williston, the following would have been the procedure: The notification as to the need for parts was received at Williston at 6:10 A. M. The first shift goes on duty at 7:00 A. M. A machinist would have been taken from this shift and sent out on train 223 departing at 8:30 A. M. and arriving Oswego at 11:30 A. M. and, since the work was completed at 12:30 P. M., he would have been sent back to Williston on train 224, departing from Oswego at 2:05 P. M. and arriving at Williston on the day in question at 5:40 P. M., or 2 hours and 40 minutes after the quitting time of the first shift. However, in this case the employes are claiming 21 hours for the machinist, while had one actually been sent the overtime payment would have been 2 hours and 40 minutes.

The carrier holds, therefore, that:

1. Based on long accepted and uncontested practice, it is proper for engine crews to make or assist in making emergency repairs to their engine in case of failure between terminals.

2. Rule 42(a) specifically authorizes foremen to perform mechanics' work at points where no mechanics are employed, and that it was, therefore, perfectly in accord with the rule for Foreman Bliven to perform the work of a mechanic in this case.

3. There being no rule violation in this case, the claim be denied.

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 waived right of appearance at hearing thereon.

On July 19, 1952 Engine 3386 became disabled on a road trip near Oswego, Montana. A message was sent to the roundhouse at Williston, North Dakota, stating the nature of the disablement and listing the parts needed to make repairs. The parts were sent on a local passenger train leaving Williston at 8:30 A.M., together with the tools required to make the repairs. The repair work was performed by an employe other than a machinist. The claimants were machinists at Williston who claim compensation for being deprived of the work.

The evidence shows that Oswego is between two engine terminals—Williston, 118 miles east and Glasgow, Montana, 38 miles west. Working Foreman Bliven, employed at Glasgow, was used to make the repairs here in question. No machinists were employed at Glasgow. It appears that the travelling engineer was notified at Glasgow of the breakdown. He took the working foreman and drove to the scene. The travelling engineer was competent to inspect and determine the parts that were needed for the repairs.

The work was clearly machinist's work. That the train crew could not make temporary repairs to get their train in, is not here disputed. The only question is whether, if a machinist was needed, as here, was the working foreman a proper employe to be used under controlling agreement provisions.

Rule 42 (a) provides:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except Foremen at points where no mechanics are employed."

The organization contends that a working foreman can do mechanic's work only at the point where he is employed when there are no mechanics assigned. The carrier contends that when a working foreman is properly assigned, he may do any and all work that a mechanic assigned at that point might do. The position of the organization is the correct one. The exception contained in Rule 42 (a) should be strictly construed. It comprehends that a working foreman may supervise helpers and perform mechanic's work at a point where no machinist is employed but it does not contemplate that such working foreman may be used generally over the railroad to the prejudice of the rights of machinists who are available to do the work.

The number of hours claimed is excessive. A machinist was available at Williston. He could have left there at 8:30 A.M. and returned at 5:40 P.M. A machinist was therefore deprived of nine (9) hours and ten (10) minutes work. One machinist was all that was required. The claim of the machinist helper will not be allowed, it not appearing that his services were necessary.

AWARD

The claim of the machinist is allowed for nine (9) hours and ten (10) minutes at the straight time rate. The claim of the machinist helper is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1954.

DISSENT OF CARRIER MEMBERS IN AWARD 1761

We the undersigned dissent in Award 1761.

The practice of the parties over the years supports the carrier's position.

There is no rule in the agreement that provides for the payment made in this award. The claimant was under pay, and even if he was entitled to the work as claimed, the most he lost was two hours and forty minutes overtime. Now to say that he is entitled to nine hours and ten minutes pay when he was paid for an eight-hour day is compounding wages. There are no rules in the agreement to provide for such payments.

/s/ J. A. Anderson

/s/ M. E. Somerlott

/s/ D. H. Hicks

/s/ T. F. Purcell

/s/ R. P. Johnson