

Award No. 2135

Docket No. 1982

2-T&P-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement other than a Machinist Helper was improperly assigned to help a Machinist on September 4, 1954.

2. That accordingly the Carrier be ordered to additionally compensate Machinist Helper W. E. Cowan in the amount of eight (8) hours pay at the applicable overtime rate of pay for September 4, 1954.

EMPLOYEES' STATEMENT OF FACTS: At Fort Worth, Texas the carrier maintains two separate shops, (1) known as their diesel shop where diesels are serviced and repaired, (2) their coach shop where coaches are serviced and repaired. These two shops are separated by approximately a distance of three or four miles, each is equipped with facilities for carrying on the proper maintenance and repairs of the equipment involved, both on the coaches and the diesels' engines.

The carrier employs in the two shops a force of shop craft employees, including laborers, all under the supervision of a master mechanic with subforemen assigned to departments. The employees of the shop crafts hold seniority on one seniority roster for each craft covering both shops. One machinist and one machinist helper are employed in the coach yard on the first shift from 7:30 A. M. to 3:30 P. M.; one machinist and one machinist helper on the second shift from 3:30 P. M. to 11:30 P. M.; one machinist and one machinist helper on the third shift from 11:30 P. M. to 7:30 A. M. The machinist and machinist helper on the second shift have staggered work week assignments which cause the machinist to work two days per week without help. The machinist has Monday and Tuesday off as rest days and his helper has Saturday and Sunday off as rest days. On Saturday, September 4, 1954, Machinist G. W. Tollett who worked the second shift assignment was in need of help and Electrician Helper R. F. Hobbs was assigned to help Tollett during his full tour of duty on the above date.

and prevent this constant sniping and agitation on the part of the companies (?) to increase the number assigned to work on Sunday..."

The carrier requests the Board to dismiss or deny the claim without further proceedings.

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 claim here made is that carrier, contrary to the provisions of the parties' effective agreement, did, on September 4, 1954, have an electrician helper help a machinist and, in view thereof, asks that Machinist Helper W. E. Cowan, who was available, be paid for eight hours at time and one-half rate.

The facts do not seem to be in dispute. Machinist G. W. Tollett was assigned to the Coach Yard at Fort Worth on the second shift, Saturday, September 4, 1954, being one of the regular work days of his work week. No machinist helper was assigned to the second shift at the Coach Yard on this day when Machinist Tollett was servicing Waukesha air conditioning units on passenger cars. Gas is used as fuel in the motors which provide power to operate the air conditioning units and is compressed and contained in steel drums which are called bottles. These bottles are held in place by brackets under the cars. When all the gas in a bottle has been used it is replaced by a full one. In connection with doing this Electrician Helper R. L. Hobbs helped Tollett put the bottles of gas in place as they were too heavy for one man to conveniently handle.

Carrier contends this Division has no right to consider this claim because neither claimant nor his representative notified the carrier, within sixty (60) days of January 24, 1955, that it rejected carrier's final decision and intended to appeal therefrom when its chief operating officer designated to handle disputes finally disallowed it. This contention is based on Article V of the National Agreement dated August 21, 1954, which became effective on January 1, 1955.

The claim here involved was originally made to the General Foreman on September 9, 1954 and handled on the property up to and including G. R. French, Director of Personnel and chief operating officer designated by the carrier to handle such disputes. French denied the claim on January 24, 1955. The next action taken was the notice filed with this Division by letter dated September 13, 1955 that within thirty (30) days this dispute would be submitted to it.

We think the requirements of Paragraph 1(b) of Article V of the National Agreement of August 21, 1954 relate to the handling of disputes on the property and the sixty (60) day notice of rejection therein required is a prerequisite to appealing from one officer to the next up to the highest officer designated for that purpose; whereas, the provision of Paragraph 1(c) of Article V relates to appeals from the decision of the highest officer designated by the Carrier to handle disputes to the several Divisions of the National Railroad Adjustment Board. In the latter situation nine (9) months is allowed and the sixty (60) day notice of rejection is not required.

Carrier contends the claim presented here is not the same as that handled on the property and, because thereof, we should dismiss it. We have examined the claim as originally made and as handled on the property during the course of its appeal up to and including G. R. French, Director of Personnel, and find it to be substantially the same as the claim lodged here. It is not necessary that a claim be made in the same identical words at each stage of its handling. It is sufficient if the claim, at all times, remains substantially the same, that is, involves the same factual situation and relates to the same cause for complaint.

Rule 40 of the parties' effective agreement, insofar as here material, provides: "Helpers' work shall consist of helping machinist * * *."

Rule 33 of the parties' effective agreement provides: "Sufficient helpers will be furnished to handle such work as required. When experienced helpers are on duty and available they will be used in preference to inexperienced men. Laborers may be used to fill temporary vacancies as helpers and when so used will be paid Helper's rate."

Under these rules, when carrier used a machinist to do this work, it was required to comply with these rules if he needed help to perform the work he was doing. Whether or not, under Rule 33, carrier could have used a laborer for that purpose we need not here decide for it did not do so. We think carrier violated these rules when it had an electrician helper assist Machinist Tollett in performing his work and must pay some machinist helper because thereof. Whom that machinist helper will be is not of concern to the carrier.

In view of what we have hereinbefore said we find the claim to be meritorious.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June, 1956.