

Award No. 2417
Docket No. 2228
2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Laborer J. R. Adams was improperly advanced to fill rest days of Machinists J. A. Wilde, G. A. Shannessy, P. M. Christie, C. B. Sorrels, H. H. Melle, R. R. Cannaday, J. A. Sherron, W. A. Ball and Machinist Helpers A. J. Tucker and C. E. Steffey, during the month of May, 1953.

2. That accordingly the Carrier be ordered to compensate the aforesaid Machinists and Machinist Helpers at the overtime rate for eight (8) hours for each date Laborer Adams was used to work as a Machinist or Machinist Helper in the month of May, 1953.

EMPLOYEES' STATEMENT OF FACTS: On the dates of the instant claim, the following machinists and machinist helpers, hereinafter referred to as the claimants, were regularly assigned as follows at the carrier's Hawthorne Enginehouse, Indianapolis, Indiana:

"Name	Tour	Craft	Relief Days
J. A. Wilde	10:00 P. M. - 6:00 A. M.	Machinist	Sat. & Sun.
G. A. Shannessy	6:00 A. M. - 2:00 P. M.	Machinist	Wed. & Thurs.
P. M. Christie	6:00 A. M. - 2:00 P. M.	Machinist	Sat. & Sun.
C. B. Sorrells	6:00 A. M. - 2:00 P. M.	Machinist	Mon. & Tues.
H. H. Melle	6:00 A. M. - 2:00 P. M.	Machinist	Sat. & Sun.
R. R. Cannaday	6:00 A. M. - 2:00 P. M.	Machinist	Sat. & Sun.
J. A. Sherron	6:00 A. M. - 2:00 P. M.	Machinist	Sat. & Sun.
W. A. Ball	6:00 A. M. - 2:00 P. M.	Machinist	Sat. & Sun.
A. J. Tucker	Relief Assignment	Machinist Hlpr	Fri. & Sat.
C. E. Steffey	6:00 A. M. - 2:00 P. M.	Machinist Hlpr	Thurs. & Fri.

The employes filed claim for eight (8) hours' pay, at the time and one-half rate, for each day Laborer J. R. Adams was advanced to a Machinist or Machinist Helper as follows:

the Claimant, and, therefore he is entitled to be paid at the pro rata rate."

6013—"In addition, under Awards of this Division, the Claimant should receive the pro rata pay, the principle announced being that employes who do not work should not receive overtime rates of pay, seems applicable here, See Awards 4916 - 4244."

5978—"The general rule is that the right to work is not the equivalent of work performed, so far as overtime is concerned. Consequently, time not actually worked cannot be treated as overtime unless the agreement specifically so provides."

6730—" * * * Moreover, the referee now sitting as a member of this Division of the Board, is of the opinion the confronting facts and circumstances bring this case within the rule, followed by many, of what he deems to be the better reasoned decisions of the Division, that where only the right to perform work is involved the penalty for work lost is the rate of the position. That since Rule 43 (b) is inapplicable, would be the pro rata rate, which has already been paid to the Claimant. For just a few of the numerous Awards adhering to and applying such rule under the facts and circumstances there involved, noting referees, see Awards Nos. 6019, 5939, 5929, 5419, 4962 (Parker); 6158 (Jasper); 5049 (Kelliher); 3955, 4244, 5176 (Carter); 5261, 5267, 5333 (Robertson); 5967 (Douglas); 5831, 5898 (Dougherty); 5142 (Coffey); 5950 (Guthrie); 6262 (Wenke)."

The carrier submits, therefore, that even assuming a violation of the applicable agreement in the instant case, which the carrier denies, the claimants would only be entitled to the compensation claimed at the straight time rate of pay.

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 the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, 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 employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that there has been no violation of the applicable agreement, and that the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employes 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.

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.

Rule 2-A-5 (a) provides in part:

"Vacancies in positions covered by this Agreement, either in positions not subject to advertisement under Rule 2-A-1 or in positions temporarily vacant pending award, may, if filled, be assigned by mutual agreement between the Foreman and designated representative. In the event agreement is not reached, the following procedure will govern."

It appears that the carrier used the procedure thereafter specified to fill the vacancies here involved without any attempt to obtain agreement by the designated representative. Thus we find that the carrier violated the rule.

Under our awards the penalty rate for work not performed is pro-rata so the claim is sustained at that rate.

AWARD

Claim sustained at pro-rata.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1957.