

Award No. 2891
Docket No. 2196
2-N&W-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Machinists)**

NORFOLK & WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinists R. A. Shell and W. E. Nicely were denied their contractual rights from March 22 to March 28, 1954 by carrier on account of Carrier assigning furloughed Back Shop Gang Leaders to perform work of Gang Leaders at Roundhouse.

2. That accordingly the Carrier be ordered to compensate the aforesaid Machinists in the amount of five (5) days' pay each at their applicable rate.

EMPLOYEES' STATEMENT OF FACTS: Machinists R. A. Shell and W. E. Nicely, hereinafter referred to as the claimants, were regularly employed by the Norfolk & Western Railway at its Portsmouth, Ohio roundhouse, a separate seniority point from the back shop. Gang Leaders R. T. Pierce and J. L. Barker, who held seniority in the back shop, were furloughed in the back shop as machinists and were worked in the roundhouse as gang leaders, thereby depriving the claimants of their right to work from March 22 to March 28, 1954 inclusive.

The agreement effective September 1, 1949 is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier violated the agreement by assigning the gang leaders (Pierce and Barker) who held rights as machinists in the back shop, to perform machinists' work in the roundhouse, another seniority point, as gang leaders, particularly Rules 30 and 44.

"Rule No. 30

Seniority of employees in each craft will be confined to the Mechanical Department at the point employed (Roanoke Shops and Portsmouth Back Shop each to be considered as a point . . ."

loughed mechanic. Under the principle the employes are attempting to apply in this case, it would then be necessary that the supervisory gang leader be furloughed at the point he is working, and under the principle being progressed by the employes, the carrier would not be able to use him as a supervisory gang leader at any point. The employes' position in this case is not logical.

Rule No. 44 of the current agreement, above quoted, requires that when shop forces are reduced, gang leaders will be cut off in line with their mechanic's seniority. In the instant case R. T. Pierce and J. L. Barker were promoted to supervisory gang leader positions at a point where they did not hold mechanic's seniority. Therefore, Rule 44 did not require laying them off from their positions as supervisory gang leader at the roundhouse when they assumed the status of furloughed mechanics at the back shop.

There are two types of gang leaders on the property: working gang leaders who hold their positions by virtue of mechanic's seniority and work part time with tools; and supervisory gang leaders who are appointed to their positions and, being strictly supervisors, perform no work with tools. R. T. Pierce and J. L. Barker were strictly supervisors. They performed no work with tools and, therefore, furloughed machinists R. A. Shell and W. E. Nicely were not damaged to any monetary degree. The Adjustment Board has always held no claim is justifiable unless the claimants are deprived of work that was performed by others. No machinists' work was performed by R. T. Pierce and J. L. Barker, and claimants had no right to supervisory gang leader positions.

The carrier respectfully requests that this claim be dismissed.

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 brief in support of carrier's position, it was conceded by the carrier that notice served by the Railway Employees' Department on this Board on December 28, 1955 of intent to file ex parte submission met the requirements of Section 2 of Article V of the August 21, 1954 agreement (time limit rule).

The carrier, however, contended that the amended claim filed by the employes on January 13, 1956 was a different claim and therefore was not filed within the time limit of said Article V, Section 2 of the August 21, 1954 agreement.

The stated claim in the said notice of December 28, 1955 was amended on January 13, 1956. The amendment did not constitute a new claim. Both claims were predicated on the alleged denial by the carrier of claimants' contractual rights from March 22 to March 28, 1954. The alleged facts constituting the denial of said contract rights were amended but the statement that the contract rights of the claimants were denied from March 22, 1954 to March 28, 1954 remained the same.

This change amounted only to an amendment to the original claim and did not constitute the filing of a new claim. Therefore, the original date of the filing of said claim remained the same, and the amendment to the said claim did not change the original date of the filing of said claim. The claim as amended is therefore properly before this Board.

There was a reduction of machinists in the said Portsmouth back shop from March 22, 1954 through March 28, 1954 which reduced R. T. Pierce, machinist, and J. L. Barker, machinist, as machinists from the work force. However, Pierce and Barker had on May 1, 1952 and November 21, 1953, respectively, been promoted to gang leaders in the Portsmouth, Ohio roundhouse from the said machinists in the back shop and were so employed during the period from March 22, 1954 through March 28, 1954. The claimants, Machinists Shell and Nicely, had prior to March 22, 1954 been furloughed as machinists from the Portsmouth, Ohio roundhouse. Shell had been furloughed on February 26, 1954 and Nicely on January 16, 1954.

Said Machinist Pierce had been promoted from machinist in the said back shop to gang leader in the said roundhouse on May 1, 1952, and Machinist Barker had been promoted from machinist in the back shop to gang leader in the roundhouse on November 21, 1953. These promotions took place many months before the date of the back shop force reduction.

The agreement involved provided for point seniority. The said back shop and roundhouse under the said agreement were two separate and distinct seniority points.

Rule 44 of the agreement involved herein is to be interpreted and applied. Rule 44 reads as follows:

“Rule No. 44—HOURLY RATED GANG LEADERS

“Hourly rated gang leaders assigned to work as supervisors under the direction of the foreman will be appointed from mechanics. Positions of hourly rated gang leaders assigned to work part time with their tools in addition to supervisory work will be bulletined to the mechanics of the proper craft. They will receive a differential of six cents (6¢) per hour above the minimum rate paid mechanics of their craft.

“Mechanics promoted to gang leaders will retain their seniority as mechanic at the last point employed as mechanic.

“When shop forces are reduced they will be cut off in line with their mechanic's seniority. In the restoration of forces they will be returned to service in accordance with their mechanic's seniority.”

It is apparent from the facts set out in this record and from the reading of said Rule 44 that there are supervisory gang leaders and working gang leaders. Supervisory gang leaders receive their jobs by appointment and are not to do any work with tools except to supervise. Working gang leaders' positions are bulletined. They work part time with their tools in addition to doing supervisory work. Said Pierce and Barker were both appointed as supervisory gang leaders in the said roundhouse (where they did not have seniority as machinists) and they were thereupon moved from the said back shop where they had acquired seniority as mechanics to the job of supervisory gang leaders in the roundhouse. Both Pierce and Barker under said rule retained their said seniority as mechanics in the back shop as that was the last point where they were employed as such mechanics.

When Pierce and Barker were furloughed as mechanics from the said back shop, it did not affect their status as supervisory gang leaders in the roundhouse because they were not employed as mechanics at the time in the back shop but were supervisory gang leaders in a different seniority point, the roundhouse.

The fact that Pierce and Barker had been appointed to the position of supervisory gang leaders in the roundhouse long before the cutback of mechanics in the back shop, did not and could not affect the contract rights of the said claimants. Further, the fact that Pierce and Barker were doing supervisory work in the roundhouse as gang leaders during the time in question did not and could not affect the contract rights of the claimants who had worked only as mechanics in the back shop and had not done any work on a supervisory basis.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.