

**Award No. 3777**

**Docket No. 3345**

**2-PRR-MA-'61**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.**

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That under the current agreement Machinist W. Hutchinson was unjustly dealt with when the Carrier assigned Sheet Metal Workers to perform Machinists' work, starting May 5, 1956.

2. That accordingly, the Carrier be ordered to compensate W. Hutchinson, eight (8) hours at the machinists' time and one-half rate of pay for each of his relief days that Sheet Metal Workers perform Machinists' work starting May 5, 1956.

3. That under the current agreement Machinist William J. Lamey, Jr., was unjustly dealt with when the Carrier assigned Sheet Metal workers to perform Machinists' work, starting May 14, 1956.

4. That accordingly, the Carrier be ordered to compensate William J. Lamey, Jr., eight (8) hours at the machinist time and one-half rate of pay for each of his relief days that Sheet Metal Workers perform Machinists' work, starting May 14, 1956.

5. That under the current agreement Machinist John Inverso, was unjustly dealt with when the Carrier assigned Sheet Metal Workers to perform Machinists' work, starting May 17, 1956.

6. That accordingly, the Carrier be ordered to compensate John Inverso, eight (8) hours at the machinists' time and one-half date of pay for each of his relief days that Sheet Metal Workers perform machinists' work, starting May 17, 1956.

7. That under the current agreement Machinist Lester R. Fox, was unjustly dealt with when the Carrier assigned Sheet Metal Workers to perform Machinists' work, starting May 18, 1956.

8. That accordingly, the Carrier be ordered to compensate Lester R. Fox, eight (8) hours at the machinists' time and one-half rate of pay for each of

his relief days that Sheet Metal Workers performed Machinists' work starting May 18, 1956.

**EMPLOYEES' STATEMENT OF FACTS:** Machinists W. Hutchinson, William J. Lamey, Jr., John Inverso and Lester R. Fox, hereinafter referred to as the claimants, are employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the Camden, New Jersey Enginehouse, which is located on the old Atlantic Division, now a part of the Philadelphia Region.

Claimant W. Hutchinson is a machinist and has relief days of Saturday and Sunday. Claimant William J. Lamey, Jr., is a machinist and has relief days of Monday and Tuesday. Claimant John Inverso is a machinist and has relief days of Wednesday and Thursday. Claimant Lester R. Fox is a machinist and has relief days of Thursday and Friday.

In May, 1950 a diesel gang was formed at Camden, New Jersey Enginehouse, consisting of three (3) machinists and one (1) pipefitter to maintain six (6) diesel locomotives.

In 1951 one (1) additional diesel locomotive was received with no increase or change in force.

During the latter part of 1953, Camden enginehouse received fifteen (15) additional diesel locomotives and early in 1954, eight (8) more diesels were received. At that time the diesel gang was increased by five (5) machinists and two (2) pipefitters.

In the latter part of 1955 and early 1956, fourteen (14) additional diesels were received at Camden enginehouse, and the diesel force was increased by four (4) machinists, three (3) machinist helpers, one (1) pipefitter, one (1) pipefitter helper and one (1) pipefitter apprentice.

During 1952 and 1953 the machinists and pipefitters worked as a team and assisted each other in making the repairs to the diesels.

On January 6, 1954, as a result of a protest by the machinists, the following items were given exclusively to the machinists:

- “1. Water Pumps
2. Lube oil pumps
3. Turbochargers
4. Injectors
5. Fuel line to injectors.”

As a result of grievances presented by pipefitters, instructions were issued on April 10, 1956 to return to the practice that was in effect during 1952 and 1953, however, those instructions were not followed and the pipefitters perform all of the work on the above mentioned items.

On June 3, 1956, the local chairman filed a claim, in writing, with the foreman, on behalf of the claimants, starting with a specified date for each claimant and for each relief day thereafter that sheet metal workers perform machinists' work.

The foreman never denied the claim nor did he ever reply to the local chairman's letter of June 3, 1956.

1. There is no evidence to indicate that the work in question was actually performed on the specific engines mentioned on each of the respective claimant's relief days.

2. The actual time required to perform the specified items of work is less than two hours.

3. The claim requests compensation for time not worked which has been limited to the pro rata in various decisions of your Honorable Board. See Awards 1951, 1771, 1799, 2285 and 2273.

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreements 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 agreements, which constitute the applicable agreements 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 employees 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 agreements, 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 employees 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.

Parties to said dispute were given due notice of hearing thereon.

The four claimants held assigned positions as machinists at Camden. Three of them presented time-card claims as follows:

William J. Lamey, Jr. Machinist 2.19 Camden Eng. House 1 days pay at time and half time for Sheet-metal workers removing and replacing water pump Engine #2016 5-14-56.

John Inverso Machinist rate 2.19 Camden Eng. House 1 days pay time and half time for sheet-metal workers removing and replacing fuel line pipes to injectors on Engine #6019 May 17, 1956.

Lester R. Fox Machinist rate 2.19 Camden Eng. House 1 days pay at time and half time for sheet-metal workers removing and replacing fuel line pipes to injectors. Engine #6008 Friday May 18th.

Under date of May 22, 1956 the Assistant Foreman denied these claims on the ground that this work had been allocated to the Pipefitters' craft. A few days after such denial and under date of June 3, 1956 the Local Chairman in behalf of said claimants submitted again the identical claims which had just been denied, additionally reciting therein their relief days and including claim for "all relief days thereafter". Also he submitted like claim on behalf of claimant W. Hutchinson "of one days pay, time and half-time, and all relief days thereafter, sheet-metal workers removing and replacing fuel line pipes to injectors, Engine #5916, Saturday, May 5th, 1956".

Carrier made no written denial of these duplicate claims presented by the Local Chairman. On August 22, 1956 the Local Chairman wrote requesting discussion of the time claims between the sheet-metal workers and machinist craft and these claims were discussed at two conferences and on October 4, 1956 the assistant regional manager offered to pay the claims of all four claimants for the named dates of their claims because they had not been denied within the period prescribed in Article V of the agreement of August 21, 1954, but declined to pay the claims for subsequent unnamed dates. This offer was rejected.

On December 18, 1956 the Local Chairman and Assistant Regional Manager signed a joint statement of "Agreed-Upon-Facts", "Position of The Employes" and "Position of Company" wherein under the "Position of Company" it was stated in substance that since the claims of the four claimants for specific dates were not denied within the time prescribed, those claims were payable but the claims for other dates were invalid.

No settlement resulted from that statement and the claims were discussed in conference with the Manager of Labor Relations on February 8, 1957 followed by letter from him denying all the claims except that of Hutchinson for the named date. There, for the first time carrier reversed its position as to the claims of Lamey, Inverso and Fox asserting that they had been denied within the prescribed period by the assistant foreman.

Thereafter a committee was appointed to report on the facts as to the handling of the work between the two crafts involved and after its report there was further conference and denial of all claims except that of Hutchinson for the named date, by carrier.

Carrier's change of position as to these three claims was not a change as to facts but as to the conclusions to follow from undisputed facts. This changed position was made known on the property and there discussed. At that stage carrier was not bound by the conclusion of its assistant regional manager and on failure of the organization to accept its offer of settlement on the

basis of that conclusion carrier was free to withdraw its offer, while the claims were still in conference on the property.

The three time-card claims were submitted by claimants as claims and were accepted by carrier as claims and claimants and their representatives are estopped thereby from denying their validity as such on the grounds urged here. After carrier had denied those claims the Local Chairman could not escape such denial by resubmission of the identical claims and require carrier to deny them a second time, therefore on failure to appeal within 60 days from the receipt of notice of denial, under the provisions of the August 21, 1954 Agreement "the matter must be considered closed" as to the three claims. The Hutchinson claim was not submitted twice, like the others, and was not disallowed as required by the agreement, so was properly allowed by carrier for the named date.

The four claims for subsequent unnamed dates were made under supposed authority of Article V, Paragraph 3 of the August 21, 1954 Agreement, which provided:

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such violation, if found to be such, continues."

In the claims here presented there was no "alleged continuing violation" nor any showing of continuing violation. The work complained of was not done continuously but only on occasion when required in the repair of particular diesel locomotives, and even then was occasionally being performed by machinists.

Apparently there were repeated violations but not a continuing violation of claimants' asserted right to the disputed work.

Further, claims for continuing violation are protected by the filing of one claim, as long as such violation, IF FOUND TO BE SUCH, continues. The claim for a named date upon which the continuing claim depends must be sustained on the merits rather than for failure to deny, in order for the claimed violation to be "found to be such".

#### AWARD

Claim of Claimant Hutchinson for May 5, 1956 sustained unless already paid.

Claims of other claimants for named dates denied.

Claims for all claimants for unnamed dates dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1961.

**DISSENT OF LABOR MEMBERS TO AWARD NO. 3777.**

The majority have ignored the clear and unambiguous language of Article V, Section 3 of the National Agreement of August 21, 1954. A continuing violation does not necessarily have to occur each and every day, but continues to be a violation each and every time the carrier makes the same improper assignment of other than machinists to perform the work subject of this dispute.

Under Section 3 of Article V of the August 21, 1954 Agreement:

"3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving the employees held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

Therefore the majority's failure to consider the instant dispute upon its merits is a circumvention of said Section 3 and Section 3, First (1) of the Railway Labor Act.

**Edward W. Wiesner**

**C. E. Bagwell**

**T. E. Losey**

**E. J. McDermott**

**James B. Zink**