

Award No. 3975

Docket No. 3778

2-LV-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier has not denied the alleged claim as prescribed in the August 21, 1954 Agreement.

2. That the establishment of a unilateral machinist leader position at Suspension Bridge, N. Y. enginehouse on June 1, 1959, constitutes a violation of the current agreement.

3. That machinist G. H. Edmiston or any relief machinist assigned to such position on or after June 1, 1959, will be paid at the foreman's rate of pay that existed on such position prior to June 1, 1959.

EMPLOYES' STATEMENT OF FACTS: On June 1, 1959, the Lehigh Valley carrier at Suspension Bridge Enginehouse placed into effect a schedule as follows:

1 — Abolished foreman position on the daylight shift.

2 — Abolished machinist position on daylight shift, which was held by claimant G. H. Edmiston.

3 — Furloughed junior machinist Edward Garrow on the Second shift who was in possession of an existing higher rate under Rule 143 of the current agreement.

4 — Transferred existing higher rate held by machinist Garrow prior to his furlough, to the daylight shift following which the position was bulletined for a machinist leader, designating rate of pay as in accordance with the agreement, and further designating the duties of this new assignment as "consistent with the provisions of the Agreement."

The claimant, G. H. Edmiston, having his position as a machinist abolished was forced to make application for the so-called leader position.

for many years and all that the carrier did, and which it had a right to do, was to change the working hours of the position from the second trick to the first trick. On August 18, 1959 in a discussion between the carrier's chief of personnel and the organization's general chairman, it was pointed out to the general chairman that the machinist leader was not to perform any of the supervisory work whatever formerly performed by the foreman. There being such a misunderstanding and after carrier had discussed it with the local supervisory forces on the Niagara Frontier and to make certain of carrier's position regarding the duties of machinist leader, a letter was directed to him by the master mechanic which was self-explanatory.

As for point #3 of the employees' statement of claim, we have, I believe, successfully defended our position above and it needs little or further explanation herein except that it was never the carrier's intent nor thought to have Mr. Edmiston perform any foreman's duties and, therefore, he is not entitled to a foreman's rate of pay.

In conclusion, carrier urges that under the current agreement it was within its rights in having the work performed as alleged. The employees have not on the property assumed the burden of proof which is rightfully theirs, and it is contended that they cannot assume the burden before this Division.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 first part of the claim is that the August 24, 1959 letter of Carrier's Chief of Personnel was not a disallowance or denial of the claim, and that it was therefore not disallowed within the 60 days prescribed by the Agreement of August 21, 1954.

The form of the claim as originally made or as appealed to that officer does not appear in the record, but the letter refers to a discussion on August 18 "of the denial decision you received in the claim of Machinist Leader Edmiston, Suspension Bridge, for the foreman rate of pay effective June 1, 1959:" and proceeds to say:

"Due to the changes in the service requirements, the rate of the Machinist Leader at Suspension Bridge was changed from the second trick to the first trick effective June 1, 1959. While it is incidental that also effective that date the foreman position at Suspension Bridge was discontinued, there were no instructions given to Machinist Leader that he was to assume any of the supervisory work formerly performed by the foreman, as such duties would be performed by the General Foreman at Tifft Terminal and the Master Mechanic. Apparently, there has been a misunderstanding of the duties we expected the Machinist Leader to perform, as a result of which this claim arose.

In order that there will be no further misunderstanding, written instructions are being issued to the Machinist Leader at Suspension Bridge that the duties of his position do not require him to perform any supervisory work and that his duties are confined to the class of the position in which he is employed, and a copy of these instructions will be furnished to you."

It stated definitely that Claimant was given none of the supervisory work formerly performed by the foreman and that the claim apparently arose from a misunderstanding as to his duties. The statement certainly constituted a denial that Claimant had been employed as a foreman or was entitled to pay as such, and was not open to any misunderstanding.

It should be noted also that it was not contended on the property that because not denied in time the claim was automatically allowed without reference to its merits. On the contrary, the statement there was as follows:

"It is the position of the machinists that we will be justified in advancing the case to the Adjustment Board based on its merits and not a mere technicality."

Procedural technicalities as required by the parties' collective agreement are not jurisdictional, but are waived by failure to assert them on the property.

The remainder of the claim is on the merits and asserts that the machinist leader position at Suspension Bridge to which Claimant was assigned as of June 1, 1959, was unilaterally established by Carrier in violation of the Agreement, and that Claimant should be paid at the foreman's rate formerly paid there.

Rule 143 established minimum rates of pay and provided that "Existing higher rates will be preserved". Rule 68 provides express differentials of 6c per hour under certain definite conditions, but does not limit Rule 143's preservation of "existing higher rates".

It is alleged by the Carrier and not denied, that the machinist leader's position at Suspension Bridge Enginehouse had existed for many years; that as stated in the letter quoted above, it was merely changed from the second trick to the first trick and that while at the same time the foreman's position was abolished, his supervisory duties were not transferred to the machinist leader but to the General Foreman at Tifft Terminal and the Master Mechanic. The Claimant stated by letter that he had received instructions that he was not charged with any supervisory duties, but that both before and after receiving the notice he received copies of orders which were also sent to foremen and that his duties were the same as when he had filled a foreman's position. The Employees' rebuttal states a belief that Claimant was given the higher rate because "he was familiar with all 'intricacies' of machinist duties," and could therefore relieve the Master Mechanic and General Foreman, 32 miles away, from duties formerly performed by the foreman. But there is no statement that Claimant was instructed to perform any supervisory duties. A general knowledge of machinist duties are important to lead machinists as well as to foremen, and the delivery of orders to lead machinists without giving them supervisory duties does not make them foremen.

In the Employees' Submission they say:

"While it is true, that such positions as Machinist Leader have existed in the Machinist Craft prior to and since the effective date of

the first agreement dated November 1, 1942, such jobs and rates have been continued based upon the language in Rule 143, and was intended only to preserve the "existing higher rate" on the position at the signing of the agreement. Nothing in Rule 143 could be construed * * * to give them the right to transfer an existing higher rate from one shift to another."

But Rule 143 relates to rates, not to jobs, and its provision preserves "existing higher rates," not "existing jobs" or "jobs on existing shifts." Consequently there was no reason for any reference to changes of shifts; for the Carrier has all the rights which it has not surrendered by the Agreement.

The change of the machinist leader's position from the second trick to the first trick without adding any supervisory duties was not in violation of the Agreement and did not entitle Claimant to foreman's pay.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3975

What the carrier has done here should be authorized by the agreement. To permit the carrier by unilateral action to establish this new position at a higher rate of pay than is given to other members of the class is in effect inconsistent with the agreement as written.

Rule 143, the rate rule of the effective agreement, contains no provision for gang leaders' rate of pay and Rule 68 covers differential rates for employees required to make inspections and sign Federal Reports and for autogenous welders. No differential rate is listed for any other employees.

Rule 34 of the current agreement provides for the filling of foremen's positions and should have been applied to claimant in this case as the evidence of record shows that the claimant was required to perform the duties previously assigned to the foreman. Therefore the claim should have been sustained and the claimant paid pursuant to Rule 34.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink