

**Award No. 4236**

**Docket No. 4033**

**2-NYC-FT-'63**

**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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. — C. I. O. (Federated Trades)**

**NEW YORK CENTRAL RAILROAD (Eastern District)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current New York Central Agreement, the following Shop Craft employes: Machinists, Electrical Workers, Sheet Metal Workers and Boilermakers at the Rensselaer, New York Fueling Station were unjustly dealt with when the Carrier abolished their positions and improperly assigned Selkirk, New York employes to perform work rightfully belonging to the employes at the Rensselaer, New York Fueling Station seniority district.

2. That the Carrier be ordered to compensate the claimants of the Rensselaer, New York Fueling Station seniority district, eight (8) hours per day at the applicable rate of pay for each day a Selkirk, New York, Fueling Station seniority district employe was assigned in the Rensselaer, New York, Fueling Station seniority district. The claimants are listed by crafts, for 1960, as follows:

**MACHINIST CLAIMANTS:**

J. Mealy	February 17, 21, 23, 24, 26, 29
	March 1, 4, 5, 7, 8, 9, 11, 12, 14, 18,
	19, 20, 24, 25, 27, 28, 29
	April 10, 19, 20, 25, 26, 28, 29
	May 9, 11, 12, 23, 26
	June 1, 2, 6, 8, 10, 11, 14, 20, 21
	<b>TOTAL 44 DAYS</b>

S. Hackman	February 17, 23, 26
	March 4, 8, 11, 18, 25, 29
	May 26
	June 6, 10
	<b>TOTAL 12 DAYS</b>

J. Desmond

March 29

May 26

TOTAL 2 DAYS

**ELECTRICIAN CLAIMANTS:**

W. Platzer

February 21, 23, 24, 25, 26

March 1, 4, 5, 7, 8, 13, 15, 23,

25, 26, 27, 29

April 1, 6, 13, 21, 23, 25, 28, 29, 30

May 5, 10, 13, 17, 30, 31

June 2, 6, 11, 21

TOTAL 36 DAYS

C. Lackey

February 23, 25

March 4, 8, 25

April 6, 21, 28, 29

TOTAL 9 DAYS

H. Leary

April 28

TOTAL 1 DAY

**SHEET METAL WORKER CLAIMANTS:**

W. Ryan

February 20, 22, 27

March 8, 9, 10, 11, 12, 15, 18, 19, 20,

28, 29

April 1, 2, 3, 9, 10, 16, 18, 19, 20, 29

May 2

June 6

TOTAL 26 DAYS

J. Kromp

March 8, 14

April 3, 10, 20

May 11

TOTAL 6 DAYS

**BOILERMAKER CLAIMANTS:**

W. Linskey

February 22

March 9

April 4, 5, 12

TOTAL 5 DAYS

J. Brennan

March 12, 15

April 11, 13, 28

TOTAL 5 DAYS

F. Patricelli

March 9, 31

April 4, 6, 12

TOTAL 5 DAYS

J. Linskey

March 1, 9, 10

April 6, 13

TOTAL 5 DAYS

M. Bianca

March 12

April 5, 11, 12

TOTAL 4 DAYS

**EMPLOYES' STATEMENT OF FACTS:** 1. At Rensselaer, New York, the carrier maintains a seven day operational facility known as the Rensselaer fueling station. This facility operates three shifts: 12 to 8, 8 to 4 and 4 to 12.

The carrier has shown by the facts herein-before submitted that under the provisions of the letter of understanding dated July 22, 1960 no payment is due the claimants; and further, the emergency road work was not improperly assigned to Selkirk employees.

The claim in the instant dispute is wholly without merit and should be denied in its entirety.

**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.

Early in 1960, the carrier abolished all mechanics' positions at Rensselaer and eight other points, and established positions of working foremen instead. The System Federation thereupon served notice under Section 6 of the Railway Labor Act for the modification of Rule 32 (a) by eliminating the exception permitting mechanics' work to be done by foremen at points where no mechanics are employed. No agreement having been obtained, the Federation thereupon filed with the National Mediation Board Case No. A-6215, which with that Board's assistance finally resulted on July 22, 1960, in (1) a Memorandum of Agreement for conferences to discuss desired changes when service requirements at a point do not justify the employment of more than one mechanic on any one shift, and for the determination by mutual agreement of Federation and Carrier representatives of the craft to be retained, a mechanic from which would perform the work of any craft; and (2) a letter agreement to apply the provisions of the Memorandum of Agreement to applicability of Rule 32(a) concerning the prior abolishment of all mechanics' positions at Rensselaer and the other eight other points, and their replacement by working foremen, with the provision that there would be no retroactive monetary adjustments.

The Mechanical Superintendent's letter of August 17, 1960, recites that at a conference held the previous day it was decided that effective as of August 22, 1960, positions would be reestablished at Rensselaer for a machinist, two electricians, a sheet metal worker, and a boilermaker; that two of them would be employed on the third shift and would cover the emergency work at Albany Station, Hudson River Yard, Bull Run, Troy and West Albany Yard; that if on the other two shifts an emergency should arise which the mechanic on the job could not handle in addition to his work at Rensselaer, he would call one of the mechanics then off duty to cover the emergency work, calling, if possible a mechanic of the craft involved.

Thus the substitution of working foremen in lieu of mechanics at Rensselaer continued only from February 17, to August 22, 1960, and was terminated by the Memorandum of Agreement of August 17 without retroactive monetary adjustment, as provided in the letter agreement of July 22.

Meantime however, the working foremen had been unable to perform their regular work at Rensselaer and in addition the emergency work there

and at Albany Station, Hudson River Yard, Bull Run, Troy and West Albany Yard, points where no mechanics had been employed, and which had previously been serviced from Rensselaer. Mechanics were therefore sent out from Selkirk, then the closest point at which mechanics were regularly employed. The Federation had theretofore filed a claim on behalf of these named claimants for a full day's pay for each day upon which work was performed at any of the above six points by Selkirk mechanics of their respective crafts.

The Employes state in their Rebuttal:

"The employees contend that when employees from Rensselaer were sent to these points for a period of 40 years, then definitely that is their established seniority district, \* \* \*."

But such a practice, however long established, cannot overrule the explicit and unambiguous agreement of the parties in Rule 31, that:

"Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft:

\* \* \*

"Maintenance of equipment.

\* \* \*."

No relevant exceptions appear in the special rules of the various crafts. Therefore the seniority of employes at Rensselaer is confined to that point and does not extend to the other points mentioned, no matter how long emergencies may have been serviced from Rensselaer because of convenience or requirements of the service, without the parties' agreement to amend Rule 31 by extending Rensselaer seniority to those points.

But the seniority of the claimants does attach to the work at Rensselaer, the point where they were employed, and it is clear that such mechanics with seniority at Rensselaer who were available for the extra service because on furlough were entitled to the work to the exclusion of mechanics whose seniority rights were limited to Selkirk.

The carrier contends that this claim is barred by the settlement of the controversy over the displacement of mechanics by working foremen, with a proviso against retroactive monetary adjustments; but this claim is not for the termination of their regular assignments through displacement, but for the carrier's failure, after their displacement from regular assignments, to call them, instead of employes from Selkirk, for this extra work in what they considered their seniority district. It is therefore a different and entirely separate matter.

The extra work performed at Rensselaer by machinists from Selkirk was as follows: February 21, March 9, 12, 14, 24, 27, 29, April 25, 29, May 9, June 2, 8, 10 (2 men) and 21.

Machinist claimants Mealy, Hackman and Desmond were first, second and seventh, respectively, on the seniority list. It cannot be ascertained from the record how many hours' work was done at Rensselaer on each of

those days, or whether one or two employes would have been required for the work done by the two Selkirk machinists on June 10, or whether either Mealy or Hackman, the first two men on the list, were available and entitled to be called for the work on the various days named, or any of them, or if not, whether Desmond, the seventh man on the list, was the man next entitled. That information is necessary to determine the pay, if any, to which each would have been entitled under Rule 7 if called.

The extra work performed at Rensselaer by Selkirk electricians was as follows: February 21, 26, March 5, 8, 13, April 28 and June 2.

According to page 6 of Employees' Exhibit "C", electricians' work was also performed at some point or points not identified therein, on February 23 (2 men), 24, 25 (2 men), March 4 (2 men), 7, and 8 (in addition to the one identified for that date, and mentioned above).

Electrician claimants Platzer, Lackey and Leary were first, second and third, respectively on their seniority list. It cannot be ascertained from the record how many hours were worked at Rensselaer by Selkirk men on each of the days named, or which of the claimants, if any, was available for call and entitled to it.

The extra work performed at Rensselaer by Selkirk sheet metal workers was as follows: February 22, 27, March 8 (2 men), 9, 10 (2 men), 11, 12, 29, April 1, 2, 3 (2 men), 9 and 20 (2 men).

Sheet metal worker claimants Ryan and Kromp were third and fourth, respectively, on their seniority list. It cannot be ascertained from the record which, if either of them, would have been available and entitled to be called for the work on any of those days, or how many hours were worked at Rensselaer by Selkirk men on any day, or whether one or both of these two claimants would have been needed for the work on March 8 or 10, April 3 or April 20.

The extra work so performed at Rensselaer by Selkirk boilermakers is as follows: February 22, March 9 (2 men), 10, 31, April 12 and 28.

Boilermaker claimants W. Linsky, Brennan, J. Linsky, Patricelli, and Biance, are the first five employes on their seniority list, and appear in that order. It cannot be ascertained from the record which, if any of them, would have been available for call and entitled to the work on any of the days mentioned, or how many hours were worked at Rensselaer by Selkirk men, or whether one or two of the claimants would have been needed for the work on March 9.

Claim 1 should be sustained with reference to the work performed at Rensselaer by Selkirk employes during the period from February 17 through June 21, 1960, but denied with reference to work performed by Selkirk employes at other points.

Claim 2 should be remanded to the property for ascertainment by the parties of the necessary information, which as above stated is not ascertainable from the record before this Board, and for the ascertainment of the amounts, if any, thus payable to each claimant under Rule 7, if they had been called for work in question.

## AWARD

Claim 1 sustained to the extent indicated in the findings; otherwise denied.

Claim 2 remanded to the property for ascertainment of the matters indicated in the findings, including the ascertainment of the amounts, if any, payable to each claimant in accordance with said findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.