

Award No. 4328
Docket No. 4288
2-CMStP&P-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the agreement other than Machinists were improperly used to make repairs to Allis-Chalmers Tractor at Milwaukee, Wisconsin on or about April 6, 1961.

2. That accordingly the Carrier be ordered to compensate Machinist D. Thomas in the amount of eight (8) hours at the rate of \$2.6380.

EMPLOYEES' STATEMENT OF FACTS: At Milwaukee, Wisconsin, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, maintains a shop for the repairs and maintenance of tractors, lift trucks, high-lows, fork lifts, cranes, and such other types of machinery as carrier owns for use by various groups of employes. This shop is commonly referred to as "The Garage".

The carrier employs machinists and helpers in this special equipment shop (Garage) to perform the work involved in this dispute, among whom is Machinist D. T. Thomas, hereinafter called the claimant. Some of these machinists and helpers are assigned to go to the depot and various other departments in the terminal to perform maintenance and repairs to any type of machinery or equipment that may need servicing or repairs. They also make repairs to such equipment in "The Garage".

On or about April 6, 1961, a clerk operator, working at the Milwaukee depot repaired one of the machines which had a worn out clutch.

This dispute was handled with all carrier officers authorized to handle grievances beginning with Foreman W. L. Witters who declined same on May 19, 1961.

The claim was then appealed to District General Car Foreman H. R. Anderson who declined same on June 15, 1961.

In Third Division Award No. 8768 it was held:

“* * * ‘The Board is of the opinion that from a review of the record before us, the facts submitted are not sufficient to support a sustaining award.’”

In Third Division Award No. 8836 it was held:

“* * * It has consistently been held by this Division that the burden of proof is upon the claimant and the Organization to show beyond a reasonable doubt that the Carrier has violated the agreement * * *.”

In Fourth Division Award No. 746 it was held:

“* * * ‘The evidence in this docket is held to be insufficient to enable this Division to determine the merits of the claim asserted,’ ”

In Fourth Division Award No. 1208 it was held:

“* * * If the facts clearly and conclusively support the Organization’s contention, then we must allow the claim; if they lack specificity and are inconclusive, we must deny it. * * * After a review of the entire record, we find that the evidence submitted by the Organization in behalf of the claim is not of sufficient substance to sustain the burden of proof required to justify an affirmative award.”

In Fourth Division Award No. 1469 it was held:

“* * * The Petitioner has submitted no factual data in support of its claim that employes other than yardmasters are performing yardmasters’ duties in violation of the controlling Agreement. This Division has repeatedly held that the burden is on the claimant to show by competent and substantial evidence that duties belonging to yardmasters are being performed by employes outside the scope of the Agreement. The Petitioner has failed to sustain this burden and the claim will be denied.”

It is, as stated previously, the carrier’s position that the instant “claim” is so vague, uncertain and indefinite that it does not constitute a proper claim and must be dismissed in its entirety, but even if it were a proper claim, and we do not agree that it is, then the carrier submits further that the employes have failed to meet the burden of proof feature in the instant “claim” in view of which the “claim” must be dismissed in its entirety.

Without in any way waiving our position that the instant “claim” must be dismissed in its entirety for the reasons outlined above, the Carrier wishes to advise that contrary to the employes contention no work exclusive to Machinists was performed “on or about April 6, 1961” by “other than Machinists” or, in other words, all work performed on or about April 6, 1961 was performed in the same manner as it has been performed in the past in view of which there occurred no violation as the employes erroneously contend or, in other words, there is absolutely no basis for the instant “claim” and the carrier respectfully requests that it be denied.

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 waived right of appearance at hearing thereon.

Claim is made in this dispute that other than Machinists were improperly used to make repairs to an Allis-Chalmers Tractor at Milwaukee, Wisconsin on or about April 6, 1961.

The Carrier makes several procedural objections.

First, that the Organization wrongly processed the Claim on the property in that the grievance was never presented to the proper officers, and secondly that improper matter has been inserted in the Organization's rebuttal statement, in violation of Circular No. 1 of the National Railroad Adjustment Board and of Circular "A" of the Second Division.

The Organization's submission consists of three pages. Its rebuttal consists of 17 pages and twenty-eight exhibits, eleven of which bear dates subsequent to the letter of notification to this Division, and Carrier maintains that none of this was presented during the processing of this dispute on the property. Obviously, the eleven exhibits could not have been discussed on the property, and to them at least, the Carrier's objection must be upheld.

We need not dispose of this case on the procedural points, since a careful reading of the whole record fails to show a clear statement of facts and evidence upon which we could properly make a judgment. The record as presented fails to state a basis upon which we could grant relief.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1963.