

Award No. 4346
Docket No. 4173
2-PRR-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

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 the Carrier is violating the provisions of Rule 2-A-1(e), when it fails to compensate Machinist J. A. Folino, three (3) hours pay at the straight time rate of the regular assignment he holds for each day he is required to work on another position.

(2) That accordingly, the Carrier be ordered to additionally compensate Machinist J. A. Folino in the amount of three (3) hours' pay at the straight time rate of the regular assignment he holds, for each day he was required to work on another position, on October 18, 19, 20, 21, 24, 25, 26, 27, 28, and 31; November 1, 2, 3, 4, 7, 8, 9, 10, and 11, 1960, and to continue for each day he is required to work on other than his assigned position.

EMPLOYEES' STATEMENT OF FACTS: J. A. Folino, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, at the carrier's Pitcairn, Pennsylvania, Car Machine Shop. Claimant held a regular bulletined position of Machinist, Grade "E" Pitcairn Machine Shop, with tour of duty 7:00 A. M. to 3:20 P. M., with rest days of Saturday and Sunday, and advertised duties of "Operate 24", 36" and 54" Vertical Boring Mill" and any other Grade "E" work assigned."

On October 18-19-20-21-24-25-26-27-28 and 31, 1960, and November 1-2-4-7-8-9-10-11, 1960, and continuing for a considerable time thereafter, the claimant was moved from his regular assigned position, operating vertical boring mill, in the machine shop and used to augment the force of Machinists assigned to "Roller Bearing Work" in the Pitcairn Wheel Shop.

There were three (3) machinist positions advertised and assigned, with duties of "Roller Bearing Work," Pitcairn Wheel Shop, and all positions were filled by the regular incumbents during the period of the claim.

The carrier did not compensate claimant in accordance with the applicable rules of the Agreement.

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.

Claimant was a regularly assigned Machinist in the Car Machine Shop in the Carrier's Maintenance of Equipment Department at Pitcairn, Pa. The advertised duties of Claimant's position were to operate the 24, 36 and 54 inch boring mill and "any other Grade 'E' work assigned." It is asserted by the Employes that on the dates set forth in the Claim, and subsequent thereto, the Claimant was moved from his regularly assigned position and duties to augment the Carrier's Machinist forces assigned to its Wheel Shop where he was required to do roller bearing work. A violation of Rule 2-A-1(e) is charged, on account of which it is asserted that Claimant is entitled to additional pay for three hours at his straight time rate for each day that the violation occurred. Insofar as applicable, Rule 2-A-1(e) provides, in substance, that an employe moved from one position to another on the same shift at the instance of Management shall receive an additional three hours' pay at the straight time rate of his regular assignment for each day that he is required to work on the other position.

The Carrier asserts the facts to be that on the dates in question there was not sufficient boring mill work to be done to occupy the Claimant's time and that he was properly required to work with the Machinists in the Wheel Shop, which was immediately adjacent to Claimant's regular work place; that no boring mill work was performed while Claimant was employed in the Wheel Shop, and that what Claimant was required to do constituted "other Grade 'E' work" within the meaning of Claimant's assigned duties and the applicable provisions of the Agreement.

The confronting questions are: (1) Whether Claimant was moved from one position to another within contemplation of Rule 2-A-1(e), entitling him to the additional pay provided for therein; or (2) Whether the Carrier was entitled to assign him to work in the Wheel Shop by virtue of his obligation to perform any other Grade "E" work, (without such additional compensation), by virtue of the advertised duties of his regularly assigned position. It is, of course, our obligation to construe and apply the provisions of the Agreement in such a way as to give full force and effect to both provisions and do violence to neither, if that can be consistently done.

The Claimant's obligation to perform any other Grade "E" work to which he might be assigned must, of course, be subject to some reasonable limitations or restrictions as to place and circumstances, since he certainly could not be expected to be available at distant or remote points, wholly disassociated from his regular assignment without additional compensation. In this case, however, it appears that the Wheel Shop where Claimant performed the roller bearing work was so immediately adjacent to the boring mill as to constitute the same work place, and if Carrier could not have required him to do this work, then his obligation to perform any other Grade "E" work would be practically meaningless.

It is not necessary for us to undertake to draw a precise line separating what could and what could not be required of the Claimant. It is enough to say that under the facts of this case the Organization has not established such a clear violation of the Agreement as to justify a sustaining Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.

LABOR MEMBERS DISSENT TO AWARD 4346

The majority conclusion in Award 4346 can only be attributed to a complete lack of understanding of the facts or total disregard of the rules of the controlling agreement.

The majority state:

"The confronting questions are (1) Whether claimant was moved from one position to another within contemplation of Rule 2-A-1(e), entitling him to additional pay provided for therein or (2) Whether the Carrier was entitled to assign him to work in the wheel shop by virtue of his obligation to perform any other Grade "E" work, (without such additional compensation) by virtue of the advertised duties of his regularly assigned position. It is, of course, our obligation to construe and apply the provisions of the agreement in such a way as to give full force and effect to both provisions and do violence to neither, if that can be consistently done."

Rule 2-A-1(b) states in pertinent part:

". . . bulletin will designate the position number (if numbered), location, tour of duty, rate of pay and major duties to be performed; advertised vacancies will also indicate the name of the regular incumbent . . ."

It is clear there is no such catch-all language in paragraph (b) of this Rule. In fact, the only language to be contained in a bulletin is spelled out emphatically clear, namely, the major duties.

The majority states:

"The claimant's obligation to perform any other Grade "E" work to which he might be assigned must, of course, be subject to some reasonable limitations or restrictions as to place and circumstances, since he certainly cannot be expected to be available at distant or remote points wholly disassociated from his regular assignment without additional compensation. In this case, however, it appears that the Wheel Shop where Claimant performed the roller bearing work was so immediately adjacent to the boring mill as to constitute the same work place, and if Carrier could not have required

him to do this work, then his obligation to perform any other Grade "E" work would be practically meaningless."

Rule 2-A-1(e) states in pertinent part:

"An employe moved from one position to another on the same shift at the insistence of management will receive an additional three hours pay at the straight time rate of the regular assignment he holds for each day he is required to work on another position."

It is clear there is no language in the above rule dealing with distances away from home points. In fact, Rule 4-H(i) of this agreement titled, "Temporary Vacancies-Out-Lying Points," provides for the protection of employes when required to leave home points and it is not a part of this dispute.

The language is very emphatic as to an employe being transferred from one position to another at the insistence of management and the reference to Grade "E" work by the majority is in fact, adding to the rule through interpretation and intent which does not exist and this Division is not empowered to change the language of the agreements before them.

The Organization did present sound facts to establish a definite agreement violation, and therefore, this entire award is in error and we dissent.

R. E. Stenzinger

E. J. McDermott

C. E. Bagwell

T. E. Losey

James B. Zink