

Award No. 4350

Docket No. 4211

2-PRR-BK-'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. (Blacksmiths)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Blacksmith Helper J. K. Yingling was improperly compensated for operating shears No. 6513 in Smith Shop No. 2 in Juniata Locomotive Shops, Altoona Works, Altoona, Pa.

2. That the Carrier be ordered to compensate Blacksmith Helper J. K. Yingling for the difference between the Grade "P" and the Grade "J" rates of pay for all time operating the shears in question from September 28, 1959 and all subsequent dates until final settlement of the claim.

EMPLOYEES' STATEMENT OF FACTS: J. K. Yingling, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a blacksmith helper, in the Juniata Locomotive Shop Blacksmith Shop, Altoona, Pennsylvania first trick, Monday through Friday, with rest days Saturday and Sunday, operating shears No. 6513 and is paid the "P" Grade Helpers' rate of pay.

The claim was presented to the Foreman by the Local Chairman on September 28, 1959 and denied by the Foreman on September 28, 1959, and was progressed to the Superintendent-Personnel, October 12, 1959, and discussed at the monthly meeting with the Superintendent-Personnel, October 20, 1959, and was denied by him on November 9, 1959. Joint submission was requested by the Local Chairman on November 23, 1959 and was completed and signed by the Superintendent-Personnel and the Local Chairman on February 19, 1960. In order to protect the claim under Article 5 of the August 21, 1954 Agreement, the subject was listed with the Manager-Labor Relations by the General Chairman on January 4, 1960, and was discussed by the General Chairman and the Manager-Labor Relations on April 11, 1960, at which time it was agreed that the subject would be referred back to the local parties in an effort to settle the matter locally, and a committee composed of the local chairman and a representative of the carrier was formed to handle the mat-

See also Third Division Awards 2202, 2862, 3373, 6413, 6442 and 6803 where the Board consistently refused to exercise jurisdiction to establish rates or change the classification of a position.

The applicable Agreement in the instant case is that of April 1, 1952, Rates of Pay effective February 1, 1951, and it cannot properly be revised or expanded in the manner contemplated in the claim by the unilateral action of one of the parties or by an award of your Honorable Board. The organization should not be permitted to accomplish something through an award of this Division, which may only properly be accomplished through the process of collective bargaining.

The carrier respectfully submits for the foregoing reasons the claim of the organization is wholly lacking in merit under the terms of the Agreement and should be denied if not dismissed.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement 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 Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine dispute 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 and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The employees' claim has been shown to be without merit and, therefore, claimant is not entitled to the compensation requested. The claim should be denied if not dismissed.

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.

As presented to us, this is in the nature of a continuing claim in which the Claimant, a blacksmith helper, asserts that subsequent to September 28, 1959, he was improperly compensated at Grade P rate, when he should have been paid at Grade J, (a higher rate). However, it appears that the position involved was abolished on June 5, 1961, and was reestablished as of September 23, 1961, when it was bid in by the Claimant. As a consequence, the claim is bounded by the above dates and cannot be considered as a continuing one beyond June 5, 1961.

The effective Graded Work Classification Rule defines Grade J Blacksmiths' work as, "Operating punch and shear for shaping and forming. All work that may be assigned to machine specified, including setting dies"; while Grade P Helpers' work is defined as, "Operating punch and shears. (Not shaping and forming). All work that may be assigned to machine specified."

A comparison of the two positions would indicate that occupants of both may operate punch and shears and that both may be assigned to machine specified; that Grade J includes shaping and forming, including the setting of dies, while Grade P does not involve shaping and forming. That is to say, when shaping and forming or the setting of dies is involved the higher, Grade J, rate should be applied. The Organization concedes that when only straight cutting is performed the P rate is proper.

The confronting problem is to determine, if we can, the nature and extent of the work performed by Claimant, (a helper), if any, that entitled him to the Grade J rate, during the period of time here involved, as above limited. In an effort to support its claim, the Organization enumerates the production of cylinder lever fulcrums, handhold support angles, ladder angles, clevis length, and draft key retainers, as items produced by Claimant between November 15, 1960, and October 31, 1961,—although as previously indicated, what occurred subsequent to June 5, 1961, is irrelevant. Another of Claimant's exhibits indicates that on seven named dates between January 9, and April 4, 1961, he worked at producing clevis lengths, for two of which he was paid the P rate and five at the J rate.

The Carrier asserts that the particular items of work performed by the Claimant and enumerated in the preceeding paragraph involved "straight cutting" and not "shaping or forming" and that no setting of dies was required, other than that which must be done in all cases where the product is to be of a specified length. Carrier further states that 98% of the Claimant's work was properly classified as "straight cutting" and only 2% was "shaping or forming," but no statistics were submitted to substantiate said percentage estimates. In rejoinder, the Organization says that if the Carrier had produced the blue prints and shearing records these would have disproved the percentages asserted by the Carrier.

The record discloses that what is Grade J work and what is Grade P work has been the subject of controversy on this property for years and it is unfortunate that the parties have not described the specific details of the work required to produce the various products involved, so that this Board would be able to put the controversy at rest and resolve the dispute on its merits. This has not been done, however, and the Board has no other alternative than to deny the claim on account of the failure of the Organization to discharge the burden of proof. The Board cannot be expected to enter into the realm of speculation and conjecture to determine the factual background of the dispute.

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.