

Award No. 4402
Docket No. 4245
2-CRI&P-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current agreement Machinist George Ritho was improperly assigned to perform Carmen's work from February 15, 1961 thru September 1, 1961.

(2) That accordingly the Chicago, Rock Island & Pacific Railroad, hereinafter referred to as the Carrier, be ordered to additionally compensate Carmen A. E. Fritz, A. C. Kroeger, V. C. Coberly and J. E. Huffman by equally dividing among them, at the time and one-half rate, all hours worked by Machinist Ritho from February 15, 1961 thru September 1, 1961.

EMPLOYEES' STATEMENT OF FACTS: At Trenton, Missouri the carrier maintains a force of four carmen, working on two shifts, with two of these carmen working 7:30 A.M. to 12:00 Noon and 1:00 P.M. to 4:30 P.M. and one car inspector working 9:30 P.M. to 6:30 A.M. and one carman relieving of the night car inspector two nights a week and working the other three days of his assignment on the repair track.

There is no mechanical foreman employed at Trenton, Missouri.

Furloughed Machinist George Ritho was unilaterally assigned by the Carrier to perform Carman's work 8 hours each day, Monday through Friday during the hours of 7:30 A.M. to 4:30 P.M. from February 15, 1961 thru September 4, 1961.

On September 4, 1961 the carrier furloughed Machinist George Ritho from the duties of a carman, which is affirmed by a letter from Vice President Of Personnel, Mr. G. E. Mallery, dated September 20, 1961.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

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.

On March 20, 1962 the Organization filed with this Division its "Notice of Intention to file Ex Parte submission" in the dispute which is the subject matter of this claim. The filing of the referred to notice was within nine months from the date that the designated highest officer of the Carrier to handle claims had rejected the claim. Subsequent to the filing of the notice with this Division, the Organization requested two 30 day extensions in the time in which it was to file its Ex Parte submission; one extension was requested on April 17, 1962 and the other on May 24, 1962. Each of the requested extensions was granted and on June 29, 1962 the Organization filed timely, its submission.

According to the Organization the Carrier allowed Machinist Ritho to perform carman's work from February 15, 1961 through September 1, 1961 and thereby deprived the four claimants herein of the opportunity to perform work in their craft. The employes seek one man's pay at the time and one-half rate, for the entire period involved; the total amount to be divided equally among them.

The Carrier tendered its submission in the instant case on June 29, 1962 and limited its statements and argument to procedural points; viz, that the Organization's Ex Parte submission was not timely filed, and the claim was therefore barred. Moreover the submission, and later the rebuttal, of the Carrier, did not discuss the merits of the claim nor did these documents deny the accuracy or the authenticity of the position taken by the Organization except to state and restate that this Board was without authority to resolve the dispute between the parties because the Organizaion had not acted within the time limits imposed by the applicable Agreements.

It is well recognized by the Board that by filing a "Notice of intention to file Ex Parte submission" a party institutes proceedings before this Board. (Emphasis ours.) It is also well established that this Board assumes jurisdiction of a dispute upon receipt of the referred to notice, and a Division may, upon application and for cause shown, grant extensions of time to each party for filing its Ex Parte submission and/or rebuttal statement. This Board, and particularly this Division, consistently has directed that a party to a dispute raise all of the issues and disclose all of the pertinent facts in its Ex Parte submission and when a procedural point is raised through this method it will be resolved before the claim is considered on its merits.

In keeping with the policy and practice of this Board and Division we find that the Carrier's position is erroneous and since the Ex Parte Submission and Rebuttal Statement of the Carrier are both devoid of any reason for its action or any contradiction of the Organization's position we must allow the claim of the employes, subject to the modification that the claim be paid at the pro rata rather than the time and one-half rate.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.