

Award No. 4462

Docket No. 4308

2-GN-MA-'64

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. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier acted unjustly by furloughing the entire force of machinists and machinist helpers at the Kelly Lake, Minnesota Roundhouse on April 17, 1961.
2. That the Carrier be ordered to return machinists' work to employes of the machinists' craft holding seniority at that point and that sufficient machinists and machinist helpers be recalled to service to perform said work.
3. That the Carrier additionally be ordered to compensate machinists and machinist helpers for all time lost since the date of April 17, 1961, when employes outside the machinists' craft took over the performance of machinists' work.

EMPLOYES' STATEMENT OF FACTS: For a great many years the Great Northern Railway Company has maintained a servicing point for locomotives and other equipment at Kelly Lake, Minnesota. It is a terminal point where iron ore cars, eventually destined for the steel mills of the East, are assembled into trains for transportation to the ore docks at Allouez, Wisconsin. In the Fall of 1960 this point was closed down during certain of the winter months when iron ore was not being handled and this resulted in the furloughing of the shop forces which included machinists and their helpers and also one electrician. On April 17, 1961, this roundhouse was reopened as a maintenance point. At that time one electrician who held seniority there for many years was returned to active service and has since resumed duties that are the same as those he performed prior to the furlough. The seniority of the electrician employed, Mr. Robert W. Peterson, is confirmed. **However, neither machinists nor machinist helpers were restored to duties at that time, and all employes of the machinist craft are still in a furlough**

The use of working foremen at all of the above points has been initiated and in most cases continued for several years without any protest from the organization, even though the work performed at those points is substantially identical to that which is performed at Kelly Lake. It has never been contended that "mechanics" remain in the employ at some of those points within the meaning of Rule 42 (a), even though four of the above-listed points have other mechanical department facilities operated under separate seniority points, where mechanics of one or more crafts are employed. At St. Cloud, Minnesota, the carrier maintains a large car repair and manufacturing facility which employs a force of hundreds of employes, composed mainly of carmen, but including machinists and all other shop craft mechanics. At Butte, Montana, six carmen mechanics were employed in the car department on July 1, 1962. At Whitefish, Montana, 40 carmen mechanics were employed in the car department on July 1, 1962. At Whitefish, Montana, 44 carmen mechanics were employed on July 1, 1962.

The foregoing clearly proves that the organization has never before sought to interpret Rule 42 (a) as it seeks to do in the instant case. It is also clear that when the carrier agreed to restrict its fundamental right to assign machinists' work by agreeing to assign such work to employes of the machinist craft, it did so with the express reservation that it could assign such work to working foremen under the circumstances involved in this case. Similar claims on other carriers involving a rule essentially identical to that involved in the instant case, were considered and denied by this Board in its Awards 188, 2643, 2916, 2959 and 3304.

**THE CLAIM OF THE ORGANIZATION, THEREFORE, IS
WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. In the absence of a collective bargaining agreement the carrier would be free to exercise its fundamental right to assign the work in question to any persons it so desired.
2. The only language in the existing schedule agreement which the organization has contended restricts the carrier's right to assign the work at Kelly Lake to working foremen is contained in Schedule Rule 42 (a).
3. Rule 42 (a) expressly reserves the carrier's right to assign machinist work to working foremen at points where no mechanics are employed.
4. In accordance with past practice on the property at many points, and Awards 3270 and 3711 of this Board, it is proper to assign work to working foremen even though mechanics of that craft or of other crafts are employed at nearby facilities operating under separate seniority rosters.

For the foregoing reasons, the carrier respectfully requests that the claim of the employes be denied.

All of the evidence and data contained herein has been presented to the duly authorized representatives of the employes.

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.

Carrier closed its Kelly Lake Roundhouse in November, 1960 and furloughed all machinists and machinist helpers. It retained working foremen as it states: "to perform the minor tests and running repairs necessary on the locomotives which operate into that point, and to supervise fueling, sanding and watering operations, and the handling of train and engine crews."

On April 17, 1961, Kelly Lake was reopened as a maintenance point, but no machinists or machinist helpers were restored. However, an electrician with seniority at that point was returned to service.

Claimants contend that the foremen and laborers are performing machinists' work in violation of the controlling agreement.

Rule 42 (a) of the controlling agreement reads as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except Foremen at Points where no mechanics are employed."

It is the Organization's position that the employment of the electrician mechanic at Kelly Lake abrogates the exception to the rule, and that there does exist machinists' work which is being performed by the foremen in violation of the rule.

Carrier contends that while the electrician is carried on the roster of the Kelly Lake Roundhouse, he is in fact working in the Kelly Lake Car Department, and questions why the Organization does not rely upon the facts that several carmen mechanics are also employed there.

If, in fact, the electrician is employed at the roundhouse, and if the foremen are performing sufficient machinists' work there to justify the employment of a machinist or machinists, then the claimants have a justifiable claim.

The controlling agreement further provides, in effect, that furloughed employes will have the opportunity to transfer to vacancies in new positions at points nearby, retaining their seniority at their home point.

The mere fact that the electrician is still carried on the seniority roster at the roundhouse does not prove that he is working there. The facts in this record disclose that he is working in the car department.

This fact, coupled with the lack of proof of the sufficiency of machinists' work at the roundhouse, forecloses the position of claimants.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.

LABOR MEMBERS' DISSENT TO AWARD 4462

The majority in their conclusions in arriving at Award 4462, appear to have either ignored the record as a whole or for reasons uncomprehensible to us, choose to believe that certain allegations and conclusions on the part of the Carrier are actually facts without any proof thereto.

Their statement:

"The facts in this record disclose that he is working in the Car Department"

is not substantiated in the record.

The record does disclose that the Carrier admits that electrician Robert W. Peterson was working at Kelly Lake, Minnesota during the period of time covered in this dispute. The Employees, for proof of their contention that the electrician was employed in the Locomotive Department rather than the Car Department, submitted Exhibits A and C which are reproductions of the Carrier's 1962 seniority rosters. This definitely establishes that Mr. Peterson held rights in the Locomotive Department and no rights in the Car Department and based on the seniority rules of the Shop Craft Agreement, which certainly can be considered the best evidence as to establishing seniority under certain conditions, and the fact that the period covered in this dispute commencing April, 1961, would have established the seniority for Mr. Peterson in sufficient time to have appeared on the Carrier's January 1, 1962 roster.

The majority then state:

"This fact, coupled with the lack of proof of sufficiency of the Machinists' work at the roundhouse forecloses the position of claimants."

The majority is in complete error here and such reasoning renders an injustice to the very basic rights of the claimants.

Based on the facts of the record and the agreement rules 42 (a) Article 7, August, 1954 Agreement prohibits use of working foremen to perform mechanic's work, therefore this claim should have been sustained.

We dissent.

R. E. Stenzinger
E. J. McDermott
C. E. Bagwell
T. E. Losey
James B. Zink