

Award No. 4557
Docket No. 4558
2-C&NW-MA-'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. 66 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)
CHICAGO AND NORTH WESTERN RAILWAY COMPANY
(M&StL Division)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement and in violation of Rules 30 and 55, the Chicago and North Western Railway Company, hereinafter referred to as the Carrier, did improperly abolish all but two (2) Machinists positions at their Cedar Lake Shops, Minneapolis, Minnesota, on April 13, 1962.

2. That on April 14, 1962, and involving the same contractual violations, the Carrier improperly created four (4) Working Foremen positions, with each respective position covering 8 hours per day, 6 days per week.

3. That the Carrier be ordered to:

a. Re-establish five (5) Machinist's positions covering 8 hours per day, 5 days per week, in conjunction with the existing Forty Hour Agreement and Rules 30 and 55, current Agreement.

b. Compensate the following named senior Machinists, hereinafter referred to as the Claimants, at the current hourly rate for 8 hours per day, 5 days per week, during the periods of time listed after each Claimant, for all time worked by Working Foremen at Cedar Lake Shops, beginning with and including April 14, 1962, and ending at such time as the situation is corrected.

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| 1. J. H. Gilchrist | From April 14, 1962, through June 30, 1962. |
| 2. Leon Setton | From April 14, 1962, through June 10, 1962;
From Jan. 4, 1963, through Feb. 2, 1963;
From Feb. 22, 1963, through April 18, 1963. |
| 3. Richard White | From April 14, 1962, thru time of correction. |

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| 4. Walter Shebatura | From April 14, 1962, thru time of correction. |
| 5. Carl Anderson | From April 14, 1962, thru time of correction. |
| 6. R. L. Hanson | From June 11, 1962, thru time of correction. |
| 7. P. F. Nelson | From July 1, 1962, through Jan. 3, 1963;
From Feb. 3, 1963, through Feb. 21, 1963;
From April 19, 1963, thru time of correction. |

c. Pay all Health, Welfare, and Vacation Benefits normally due the listed Claimants had they remained and worked during the period between April 14, 1962, and time of correction.

d. Compile in the nature of monetary value, any and all overtime worked by these four (4) Working Foremen, during this period of time and distribute payments of an equal amount to the listed Claimants.

EMPLOYES' STATEMENT OF FACTS: The Carrier did employ fourteen (14) machinists prior to April 14, 1962, at their Cedar Lake Shops, Minneapolis, Minnesota.

On April 13, 1962, the carrier abolished, by bulletin, all but two (2) machinists' positions, and as a result, and on the same date, twelve (12) machinists were furloughed.

On April 14, 1962, the carrier created four (4) working foremen positions, with each respective position covering 8 hours per day, 6 days per week, and additional overtime as required.

The carrier, at their discretion and not in accord with bids or seniority, assigned four (4) men who are junior to the claimants involved in these positions with the work schedule reading as follows:

1 Working Foreman	8 A. M. to 4 P. M.	Monday thru Saturday
1 Working Foreman	4 P. M. to 12 P. M.	Tuesday thru Sunday
1 Working Foreman	12 P. M. to 8 A. M.	Wednesday thru Monday
1 Working Foreman	8 A. M. to 4 P. M.	Sunday
	4 P. M. to 12 P. M.	Monday
	12 P. M. to 8 A. M.	Tuesday thru Friday

The carrier, as previously disclosed, continued to employ the two (2) most senior machinists with their work schedules reading as follows:

1 Machinist	8 A. M. to 4 P. M.	Sunday thru Thursday
1 Machinist	8 A. M. to 4 P. M.	Friday and Saturday
	12 P. M. to 8 A. M.	Sunday thru Tuesday

On May 14, 1962, the carrier rehired one additional machinist to work 8 A. M. to 4 P. M., Monday through Friday, for purpose of performing wheel and axel boring and turning and other miscellaneous machine work.

On May 29, 1962, General Chairman R. W. Jackson, filed a letter of claim in behalf of Machinists J. H. Gilchrist, Leon Setton, Richard White, Walter Shabatura and Carl Anderson, for 8 hours per day, 5 days per week, for each respective claimant, for all machinist's work performed by working foremen at Cedar Lake Shops beginning with and including April 14, 1962, until the situation is corrected in accord with the working agreement, and in

sented by the federated shop crafts' organization. Award 2586 therefore lends no support to the claim here involved. On the contrary the understanding as indicated by the letter of October 31, 1936 together with the practice on the property requires that the claim in this case be denied.

While Award No. 2586 therefore does not lend any support to the claim in this case, if for any reason this board should hold that the claim in this case has any merit whatsoever, then interpretation No. 1 to Award No. 2586 is important to determining what, if any, compensation claimants are entitled to. In its interpretation of Award No. 2586 the Board held:

"The Board interprets its Award 2586 as contemplating that the three employes concerned are entitled to be compensated on the basis of their regular assigned hours, pro rata for time lost, from the time their positions were abolished until such positions were re-established and the Carrier restored or offered to restore said employes to said positions, less any amounts said employes may have earned at other employment during said periods."

If, therefore, this board for any reason sustains any part of this claim, claimants are entitled at most to be compensated in accordance with interpretation No. 1 of Award 2586.

The carrier submits, however, that under the agreement here in effect between this carrier and the organization the carrier has the right to create working foremen positions, and to expect working foremen to perform work.

The carrier therefore submits that this claim should be denied in its entirety.

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.

The record presented discloses that work from Carrier's Cedar Lake Shops was transferred to Marshalltown Shops. As a result all but two machinists were furloughed. On April 13, 1962, the date on which the transferring of the work was completed, the Carrier created 4 Working Foremen positions and assigned 4 machinists to these jobs; the men assigned were junior, in seniority to the seven machinist claimants herein.

The working foremen covered all three shifts. They worked six days per week. On the first and third shifts the working foremen supervised a machinist, a machinist helper and an electrician and usually on the first shift, a laborer.

The employes allege that the agreement was violated when the carrier created the working foremen positions under the conditions as they existed on

April 13, 1962, and do still exist. To support their position the employees refer us to the following rule of the agreement:

"Rule 30 Assignment of Work

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.

This rule does not prohibit foremen in the exercise of their duties to perform work.

At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

A careful review of this record reveals to us that the employees' position is supported by the rule and by the evidence which they and the carrier have presented to us.

We believe that the carrier violated the agreement when it created the working foremen positions and that the violation will continue to exist so long as Cedar Lake Shops are operated in the manner described above. We hasten to add however, that this finding should not be construed to mean that we are expressing an opinion or issuing a directive to the carrier concerning the manner in which it operates its property. The statute which created this Board also limited its jurisdiction to interpreting and applying the agreements which are properly brought before it. Therefore, even though the claims presented request it, we cannot make a finding that the carrier improperly abolished all but two Machinist positions at Cedar Lake Shops on April 13, 1962 — we do find however that the agreement was violated when the five original claimants were furloughed on that date and their work performed by the working foremen. Neither can we direct the carrier to re-establish five Machinist's positions at Cedar Lake Shops as has been requested, but we can, and do, find that the carrier's failure to re-establish the mentioned positions will cause a continuing violation of the agreement — so long as the working foremen continue to do these claimants' work — thereby entitling the current claimants to future compensation and benefits which are described below.

In addition to the claims which have been discussed above the employees also seek compensation for 40 hours per week, plus an equal division of the monetary value of the overtime worked by the working foremen.

The agreement provision that we consider applicable restricts compensation payments to the net wage loss, if any, sustained by the claimants. Because we have found that the claimants were furloughed in violation of the agreement we find that their net wage loss should be computed by the organization and the carrier herein and the net loss, if any, paid to them.

In the claims the employees also request that the premiums be paid on all Health and Welfare benefits during the period between April 14, 1962 and the date of correction. Awards Nos. 3883 and 4532 of this Division, in interpreting provisions which restrict compensation to the net wage loss, if any, and in dealing with similar claims, have determined that such requests must be denied. We feel compelled to follow those Awards. Therefore, we must deny that portion of the claims.

AWARD

Claim (1) denied in accordance with the above findings.

Claim (2) sustained.

Claim (3) sustained in part and denied in part in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.