

Award No. 4559

Docket No. 4565

2-PRR-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. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement by assigning machinist work to Acting Gang Foreman H. M. Baumbach on July 17, 1962.

2. That the Carrier be required to compensate Machinist A. H. Taylor for eight (8) hours at the Grade E rate of pay for July 17, 1962.

EMPLOYEES' STATEMENT OF FACTS: This dispute arose at the carrier's Harrisburg enginehouse, where the claimant held a regularly assigned position of Grade E Machinist, first trick, with rest days of Monday and Tuesday.

H. M. Baumbach also held a regular position of machinist at the same location, with rest days on his machinist position of Sunday and Monday. However, Baumbach also held standing as an extra gang foreman with seniority dating from February 3, 1951, in the gang foreman class and was used from time to time as a gang foreman.

Commencing on Thursday, July 12, 1962, Baumbach was assigned to fill the gang foreman position of J. R. Kiner, who was on vacation. The rest days of this assignment were Tuesday and Wednesday.

Baumbach worked Gang Foreman Kiner's position Thursday, July 12, through Monday, July 16, 1962. However, instead of observing the rest days of the gang foreman's position he was working, he was allowed to work as a machinist on Tuesday, July 17, and was reported as "off with permission" on the following day.

On July 19, 1962, immediately following the two rest days of Kiner's gang foreman position, Mr. Baumbach was assigned to the gang foreman vacancy of R. M. Schneider and continued to work that vacancy until October 23, 1962, at which time he was awarded Schneider's gang foreman position.

Thus, from July 12 to October 23, 1962, H. M. Baumbach worked consecutively on vacancies in gang foreman positions, having been scheduled prior to July 1, 1962 to work those vacancies.

On the disputed date, July 17, 1962, claimant was observing one of the rest days of his regular position and was available in accordance with the overtime agreement, to perform the machinist work assigned to H. M. Baumbach.

On July 30, 1962, the local chairman filed a claim with the foreman for eight hours pay at the grade E rate on behalf of the claimant, on the basis that H. M. Baumbach was used to fill the gang foreman position of J. R. Kiner on July 12, 13, 14, 15, 16, 1962, and should have absorbed the rest days of that position.

The foreman denied the claim on July 31, 1962, and, on August 9, 1962, the local chairman rejected the foreman's decision, and appealed the matter to the superintendent of personnel.

The superintendent denied the appeal on September 10, 1962, and, on October 10, 1962, the local chairman rejected the superintendent of personnel's decision.

The superintendent of personnel and local chairman prepared a joint submission in the case for use in handling at the next level, and the matter was turned over to the general chairman.

The general chairman listed the case with the manager of labor relations on October 9, 1962, and, following a discussion of the matter at a regular meeting on December 11, 1962, the manager of labor relations denied the claim on December 21, 1962.

On February 27, 1963, Second Division Award No. 4134 was issued by the National Railroad Adjustment Board, and, on April 17, 1963, the general chairman listed the instant case for rediscussion with the manager of labor relations.

The case was rediscussed on May 14, 1963, and the general chairman, on the basis of similarity of the instant case to that of the case involved in Second Division Award No. 4134, requested the manager of labor relations to reconsider his denial.

Following this final conference on the property, the manager of labor relations, on May 22, 1963, advised the general chairman that, after examining Second Division Award No. 4134, he would not change his decision.

Therefore, the matter having been handled progressively with the designated officers of the carrier up to and including the manager of labor relations, the highest officer of the carrier designated to handle grievances, and the carrier thus far having declined to make satisfactory adjustment, this dispute is submitted to your honorable board.

The agreement covering rules effective April 1, 1952, and October 15, 1960, and rates of pay effective February 1, 1961, as they have been subsequently amended, is controlling.

POSITION OF EMPLOYEES: The position of the employees was succinctly stated during the handling of the case at the local level, when the local chairman, in the "Position of Employees" of the joint submission, stipulated thus:

Therefore, the carrier respectfully submits that your honorable board should dismiss or deny the claim of the Employees in this matter.

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 employees 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 parties have agreed upon the following as a Joint Statement of Facts:

"Claimant A. H. Taylor was regularly assigned as a Machinist at the Harrisburg Enginehouse on the 'A' trick daily except Monday and Tuesday.

"From Thursday, July 12 through Monday, July 16, 1962, Gang Foreman J. R. Kiner, who was regularly assigned at the Harrisburg Enginehouse on the 'A' trick daily except Tuesday and Wednesday, was off duty on vacation.

"Machinist H. M. Baumbach, regularly assigned at the Harrisburg Enginehouse on the 'A' trick daily except Sunday and Monday, worked his regular position on Tuesday and Wednesday, July 10 and 11, 1962, and from July 12 to July 16, 1962, he filled Gang Foreman Kiner's vacation vacancy. In filling Kiner's vacation vacancy Baumbach worked Sunday and Monday, July 15 and 16, 1962, which were the assigned rest days of his regular Machinist position. On Tuesday, July 17, Baumbach worked his regular position. On July 18, 1962, Baumbach was off duty with permission and on July 19, 1962, filled R. M. Schneider's Gang Foreman vacancy as a result of Schneider filling an Assistant Foreman's vacancy.

Baumbach is a member of the Extra Gang Foreman's list and holds seniority as a Gang Foreman dating from February 3, 1951."

The Organization contends that the Carrier violated the Agreement when it allowed a Foreman to perform Machinist's work on his (Foreman's) rest days. It seeks 8 hours' pay for claimant and alleges that he should have been called to perform the work.

The Carrier raises two procedural points and asserts that this Board should give no consideration to the claim presented because, (1) the claim before us is not the same as the one presented on the property, and (2) the Organization initially referred to Mr. H. M. Baumbach as a "Machinist" whereas in this claim he is termed an "Acting Gang Foreman" and that this change is significant to the point of also changing the nature of the claim. The Carrier's submission contains sufficient information to convince us that its point (1) above is incorrect and because the Organization's rebuttal states that the job titles may be considered as synonymous, since the change was for the sake of brevity, we are of the opinion the mentioned point (2) likewise need not be given the significance sought by the Carrier.

There can be no doubt but that the Carrier would be in violation of the Agreement if it allowed a foreman to perform the work involved herein. Therefore, we are confronted with the query — was H. M. Baumbach a gang foreman on July 17, 1962?

It is not disputed that Mr. Baumbach acted as a vacation replacement for Gang Foreman Kiner. Also, the parties each describe the vacation period as being from July 12 through July 16, 1962.

The Organization contends that because H. M. Baumbach was used to fill Gang Foreman Kiner's position he should have absorbed the rest days of that position and that the proper rest days were July 17th and 18th. To further support the position taken the Organization goes on to point out that beginning on July 19th Mr. Baumbach assumed another Gang Foreman's position when he served as a replacement for R. M. Schneider, and that each of the changes in position was scheduled prior to July 1, 1962.

Were it not for the fact that the record discloses that Mr. Baumbach was steprated to fill Gang Foreman Kiner's vacation vacancy July 12 through 16, 1962 and steprated again on July 19, 1962 to fill the vacancy of Gang Foreman Schneider we would follow the award cited by the Organization. (Award No. 4134 of this Division). However, the disclosure mentioned causes us to ponder if it is possible for a person to be employed continuously as a Gang Foreman during a period of time when the proponent for this position states that the party in question was steprated to Gang Foreman on one day and again one week later and when both dates are within the continuous period of time being relied upon.

Because the record presented does not give us sufficient facts to prevent our having doubts as to what Mr. Baumbach's position status was on July 17, 1962, i.e., Machinist or Gang Foreman, it is impossible for us to say that the Carrier did, in fact, violate the Agreement. Therefore, and to follow numerous prior Awards of this Division and Board which so hold, we are compelled to find that when, as here, there is a lack of conclusive evidence to support the position taken by the claimant the claim must be denied.

AWARD

Claim denied.

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.