

Award No. 4627
Docket No. 4624
2-CRI&P-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the terms of the controlling agreement the Carrier improperly assigned Carman Robert Abshire to the duties of assisting Machinist R. B. Anderson in performing the work necessary in removing, dismantling, repairing and reinstalling the number one power truck and the removing and reapplying a pair of wheels in Diesel #130 at Eldon, Iowa on October 18, 19, 20, 21, 1962.

2. That accordingly the Carrier be ordered to compensate Machinists John Barber and S. B. Cooksey in the amount of ninety-four and seven twelvths (94 7/12) hours to be equally divided between them."

EMPLOYEES' STATEMENT OF FACT: On or about October 18, 1962, the Chicago Rock Island and Pacific Railroad Co., hereinafter referred to as carrier, experienced a failure on its diesel unit no. 130 at Eldon, Iowa, consisting of a pair of broken wheels in a power truck of the unit. Carrier elected to make the necessary repairs at Eldon, and on October 18, 1962, carrier sent Machinist R. B. Anderson and Carman Robert Abshire both of whom are regularly employed as such at Silvis, Illinois, along with Diesel Supervisor U. H. Flippen to Eldon to make the necessary repairs.

The work necessary to making the repairs consisted of properly jacking and blocking the unit, removing the No. 1 power truck, dismantling the truck and removing the broken pair of wheels, installing new pair of wheels, rebuild and assemble the truck, install the complete power truck under the unit and remove blocking and jacks. All of said work is considered machinists' work and regularly assigned to and performed by machinists at Carrier's Silvis Shop.

The work could not be performed by Machinist R. B. Anderson by himself, a fact that carrier was well aware of and both Carman Robert Abshire and Diesel Supervisor U. H. Flippen worked alongside of Machinist Anderson in performing the work on October 18, 19, 20 and 21, 1962.

On October 20, 1962, carrier sent Machinist R. G. Anderson, who is regu-

Having determined that the National Railroad Adjustment Board may not impose a penalty, unless expressly provided for in collective bargaining contract, we now come to analyzing Petitioner's prayer for a monetary Award as set forth in Parts (2) and (3) of its claim. These parts set forth a formula for computing a monetary Award without regard to actual net losses, if there be any. The fulcrum is resolution of the issue as to whether such an Award would be a penalty.

In contract law a party claiming violation of a contract and seeking damages must prove: (1) the violation; and (2) the amount of the damages incurred. A finding of a violation does not of itself entitle an aggrieved party to monetary damages.

In the instant case Petitioner has proven the violation. It has not met its burden or proving monetary damages. There is no evidence in the record that any Employee in the MW collective bargaining unit suffered any loss of pay because of Carrier's violation of the contract. The inference from the record, if any can be drawn, is that the MW Employees were steadily employed by Carrier during the period of the project. Therefore, for this Board to make an Award as prayed for in Parts (2) and (3) of the Claim would be imposing a penalty on the Carrier and giving the MW Employees a windfall—neither of such results is provided for or contemplated by the terms of the contract. To make such an Award, we find, would be beyond the jurisdiction of this Board."

In conclusion, carrier has shown that the organization's claim fails in two counts. First, the machinists at Silvis have no contractual right to work performed at Eldon and, second, the work performed by Carman Abshire is in no way a violation of the machinists' agreement. Further, the Organization has claimed an arbitrary windfall in this case and previous awards have ruled that claims for money are not valid unless time is actually lost by the claimants involved.

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.

There is no question but that the work required on Diesel 130 was machinist's work. At Eldon there were inadequate facilities, so the Carrier utilized a car department truck equipped with power jacks to assist in accomplishing that work. It assigned a carman to drive that truck and operate the electric jack equipment. The fact that this truck was normally assigned to the car department does not justify the use of a carman thereon when it is assigned to accomplish machinist's work.

With respect to part 2 of the claim, it is obvious that some machinist was deprived of overtime opportunity by such violation of the agreement. It is

difficult to ascertain the number of hours actually worked from this record and certainly the time claimed by the employes must encompass premium time and is wholly unrealistic under our decisions. We have concluded that a total of 32 hours' pay at pro rata rate divided between the claimants would constitute appropriate reparation for the overtime opportunity lost.

AWARD

Claim sustained to the extent stated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 11th day of December, 1964.