

Award No. 4628

Docket No. 4625

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 Assistant Master Mechanic J. H. Henson to the duties of assisting Machinists R. B. and R. G. Anderson in performing the work necessary in removing #1 power truck from under Diesel #130, dismantling the truck, removing broken wheel, applying new wheels, reassembling truck and installing truck under locomotive at Eldon, Iowa on October 20 and 21, 1962.

2. That accordingly the Carrier be ordered to compensate Machinist Floyd Hasson in the amount of twenty-one (21) hours at time and one-half rate of pay."

EMPLOYEES' STATEMENT OF FACTS: 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-

contract now before us contains no such provision.

Having determined that the National Railroad Adjustment Board may not impose a penalty, unless expressly provided for in a 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 any there be. 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 of 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 on two counts. First, the machinists at Silvis have no contractual right to work performed at Eldon, and, second, the work performed by Assistant Master Mechanic Henson in no way violated the machinists' agreement. Further, the organization has claimed the time and one-half rate of pay in this case and previous awards have ruled that claims for money must be limited to the straight-time rate and 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.

While the Carrier asserts that the Assistant Master Mechanic acted only in a supervisory capacity, the evidence supports the claim that he performed mechanic's work in violation of the Agreement.

The fact that claimant's seniority is not at Eldon is irrelevant because of the rules providing for service away from assigned point and the fact that the

Carrier chose to assign employes from the claimant's seniority point to perform the service required.

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 determine the number of hours actually worked from this record and the claim for time and one-half rate is not consistent with our decisions. We have concluded that a total of 16 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.