

Award No. 4729

Docket No. 4645

2-SLSW-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the rules of the current agreement Machinist Helper C. H. Ramsey was improperly used as a Machinist from November 14 through November 17, and November 24 to December 3, 1962, inclusive, to fill vacancies of journeyman Machinists at Shreveport, Louisiana.

2. That accordingly the Carrier be ordered to additionally compensate the following Machinists for eight hours' at time and one-half for the dates indicated:

C. E. Lang—November 14, 16, 25, 27 and 28, 1962

M. E. Mitchell—November 15, 17, 30 and December 2, 1962

C. F. Reynolds—November 24, 26, 29 and December 1 and 3, 1962

EMPLOYEES STATEMENT OF FACTS: At the beginning of the period in dispute the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier had four Machinists regularly assigned at Shreveport, Louisiana. They were C. F. Reynolds, with seniority as of February 17, 1950; C. E. Lang, with seniority as of October 6, 1955; M. E. Mitchell, with seniority as of June 28, 1958; and R. F. George, with seniority date as of April 10, 1943, whose sudden death on November 26, 1962 created a vacancy during the latter part of that month. Machinist George was regularly assigned to work 7:00 A. M. to 3:00 P. M., with Saturday and Sunday rest days, and Machinists Reynolds, Mitchell, and Lang, hereinafter referred to as the claimants were assigned as follows:

Reynolds, 3:00 P. M. to 11:00 P. M., Sunday and Monday rest days.

Mitchell—7:00 A. M. to 3:00 P. M., Saturday and Sunday.

3:00 P. M. to 11:00 P. M., Monday.

These allegations are not consonant with the terms and spirit of the National Agreement of March 19, 1949, commonly known as the forty-hour week agreement, which contemplated and intended that the employees would be granted 2 rest days in seven. The principle evidenced in many decisions of various divisions of the Adjustment Board is that the forty hour week agreement by providing for two rest days in seven was not thereby striving to place additional costs on the carriers by requiring the payment of overtime for work performed on such rest days, but on the contrary, was striving to preserve the rights of employees to rest on their rest days. The spirit and intent of the 40 Hour Week Agreement as fully expressed and declared in Second Division Awards 1885, 1883, 1824, 1566, 1565 and 1528; and Third Division Awards 6946, 6023 and 6001, refutes the Employees' allegation that claimants had a demand right to work the vacation relief work on their rest days. One of the purposes of the forty-hour work week was to discourage, rather than to encourage, the use of employees in excess of forty straight time hours and on their two rest days by providing for payment for such time at the overtime rate of pay.

IV

With regard to the four days involved in this claim on which Ramsey was performing relief work which was not the result of a vacation vacancy, carrier submits that this was necessary as a result of the death of one of the regularly assigned machinists—R. F. George. There were no machinists available to work the regular assignments and a machinist from Pine Bluff, B. Morris, could not report to Shreveport until December 6 to fill the permanent vacancy created by the death. Therefore, Machinist Lang was temporarily used to fill the 7 A. M.-3 P. M. assignment and Ramsey was used to protect Lang's assignment 11 P. M.-7 A. M. Even then on two dates it was necessary to blank a machinist assignment account no machinist available to protect it. On Thursday, November 29, Lang layed off to attend the funeral of R. F. George and it was necessary for Ramsey to work the 7 A. M.-3 P. M. assignment, and the 11 P. M.-7 A. M. assignment was blanked. On Sunday, December 2, Ramsey layed off for personal reasons and the 11 P. M.-7 A. M. assignment was blanked.

V

Without prejudice to its position that there was no violation of the rules of the agreement for Ramsey to work as a machinist at Shreveport on claim dates, in any event if the claimants were entitled to any payment (and clearly they are not) it could be for no more than the straight time rate. This division, as well as other Divisions of the NRAB, has consistently held that pay for time not worked cannot be compensated for at the overtime rate. Second Division Awards 2956 and those cited therein, 3256, 3272, 3406, 3410 and others. Third Division Awards 6160, 6013, 5978, 6730 and those cited therein, and others.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Parties to said dispute waived right of appearance at hearing thereon.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Carrier violated Rule 34-1 by using a machinist helper as a machinist. We find nothing in either the Agreement or the Vacation Agreement which authorizes a departure from that rule.

Claim 2 is for compensation at time and one-half for the three claimants for four or five specified days each, totalling fourteen, but on only thirteen of which the machinist helper actually worked. On only five of those days was the named claimant therefor on a rest day and accordingly most available and entitled:—Lang on two days, Mitchell on two days, and Reynolds on one. Pay for time not worked is at the straight time rate.

AWARD

Claim 1 sustained.

Claim 2 sustained at straight time rate to the following extent: Claimant Lang, two days; Claimant Mitchell, two days; Claimant Reynolds, one day.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.