

Award No. 4755
Docket No. 4705
2-NYC&St.L-MA-'65

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 57, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**
**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement The New York, Chicago and St. Louis Railroad Company, hereinafter referred to as the Carrier, violated Rules 29 and 52 when, on January 4, 1963, Furloughed Painter C. Gasick was used to fill the third shift vacancy created by the absence of Machinist Cavato.

2. That under the current Agreement, the Carrier violates Rules 29 and 52, when on January 5, 1963, and continuing thereafter, Furloughed Painter C. Gasick has been used to fill the still existing vacancy created by the absence of Machinist Cavato.

3. That accordingly, the Carrier be ordered to compensate Machinist G. Bolz eight (8) hours' pay at time and one-half machinists' rate for January 4, 1963.

4. That accordingly, the Carrier be ordered to compensate Machinist G. Bolz eight (8) hours' pay at time and one-half machinists' rate for January 5, 1963, and all other such days until May 18, 1963, that Mr. Gasick filled the machinist's vacancy.

5. That accordingly, the Carrier be ordered to compensate Machinist G. Bolz eight (8) hours' pay at time and one-half machinists' rate for every day Mr. Gasick filled the machinist's vacancy from November 5, 1963, to November 11, 1963, inclusive, and from December 3, 1963, to December 17, 1963, inclusive.

6. That accordingly, the Carrier be ordered to compensate Machinist G. Bolz eight (8) hours' pay at time and one-half machinists' rate for every day Mr. Gasick has filled the machinist's vacancy beginning February 25, 1964, until claim is adjusted.

During the course of handling the claims on the property several conferences were held with the general chairman of the claimant organization in an attempt to arrive at some solution to the problem of securing journeymen machinists to alleviate the shortage of machinists at Calumet. As part of this program a notice was sent by the carrier to all furloughed employes of the machinist craft over the entire property. In a further effort to relieve this situation, the general chairman published an advertisement in the nationally circulated magazine of the International Association of Machinists. Neither of these efforts met with success and it has been necessary **(without protest on the part of the claimant organization)** to upgrade or transfer other employes to machinist positions since the incident here forming basis for claim. This fact is also attested to in the aforementioned statement of the local chairman.

POSITION OF CARRIER: It is the carrier's position that the hiring of G. Gasick as a machinist at Calumet, in the circumstances hereinabove described, was in no respect improper or in violation of the effective rules, including those cited by the employes in handling the case on the property. Mr. Gasick is fully qualified and capable of fulfilling all the duties required of the machinist position to which he was assigned. While it is true that Mr. Gasick has not had four years **working** experience as a machinist, he has spent approximately seven (7) years in various trade schools (night courses), including two (2) years in machine shop training and one and one-half (1½) years in electrical shop training at Tilden Technical High School (Chicago), three (3) years of training as a machinist and tool and die maker at the National School of Mechanical Trades (Chicago), and one (1) year in machine shop and acetylene welding training at Chicago Vocational High School. Mr. Gasick's qualifications have been attested to by the local chairman and **have not been denied or challenged by the general chairman at any time during the handling of the case on the property.**

It is attested by the local chairman that **not only did the local committee of the claimant organization concur in the assignment of Mr. C. Gasick to the position of machinist at Calumet, but since that time have concurred in the transfer of two other employes to machinists' positions at Calumet, neither of whom had the four years' machinist experience insisted upon by the general chairman and one of whom, Theodore Kraly, was transferred from a position of electrical helper, a craft, as in the instant case, represented by another organization.** These two transfers were made with the full knowledge of and without protest by the same general chairman who progressed the instant claim. The only difference between the three cases is that in the instant case a claim was submitted by a machinist who professed to feel that he should work two jobs every day, the second at time and one-half rate. What he is actually saying, and what the general chairman is concurring in, is that the carrier should be penalized to the claimant's advantage simply because the carrier could not, despite repeated efforts, secure the services of a four-year machinist for the third-trick vacancy in question, this notwithstanding the fact that the employe who was assigned to the job was **admittedly fully qualified for the position.**

Without waiving this position, the carrier further holds that were the claim with merit (which is denied) it could not be allowed at punitive rate, since the time claimed was not actually worked by the claimant. This position has been affirmed in numerous awards of all the divisions of the National Railroad Adjustment Board.

Carrier has shown that the claim is completely without merit and should be denied.

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.

Rule 29 provides that "none but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft", and Rule 52 provides that "any man who has served an apprenticeship or has had four years experience at the machinists' trade *** shall constitute a machinist". Any deviation therefrom must be by agreement, as the parties have recognized by prior agreements to do so, for example the agreement of June 26, 1956. Such an agreement would be made with the General Chairman of the Organization, not with the Local Committee.

Despite this, the Carrier hired G. Gasick to fill a machinist vacancy commencing January 4, 1963, with the approval of the Local Committee, although he had not served an apprenticeship nor worked four years as a machinist. This was a violation of the agreement.

With respect to reparation we have consistently held that the appropriate rate for work not performed is pro-rata, so the monetary claims will be sustained only to that extent.

A W A R D

Claim sustained to the extent stated in findings only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.