

Award No. 4783

Docket No. 4718

2-CGW-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. 66, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

CHICAGO GREAT WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement and in violation of Rule 15 (Filling Vacancies), current Agreement, between the Carrier and System Federation No. 66, the Carrier has improperly and without bulletin assigned a Machinist to a position of Machinist Welder. This position encompasses a six cents (6c) per hour differential in conjunction with Rule 60, paragraph c, current Agreement.

2. That the Carrier further violates the Vacation Agreement of December 17, 1941, as amended, and the Agreement of August 19, 1960, Article III, Section 1, covering Holiday Pay, by its failure to pay this 6 cents per hour differential to the present improperly assigned incumbent during assigned vacation periods and on regularly paid holidays.

3. That the Carrier be ordered to properly bulletin this position as Machinist Welder in accord with Rule 15, to all members of the Craft, and pay the differential rate of pay to the successful applicant on his regular assigned work days, vacation days, and holidays.

4. That employees do not request financial restitution for the period of time that this violation has been in existence.

EMPLOYEES' STATEMENT OF FACTS: The carrier does employ a machinist as a machinist welder at their Oelwein, Iowa, Shops. This position is presently filled by Machinist Dominic J. Napoli.

Machinist Napoli was arbitrarily assigned to this position by the carrier without bulletin to the remainder of the craft.

Machinist Napoli works the day shift, Monday through Friday, and on each day of his regular assignments he receives 6 cents per hour differential.

Without waiving its position that Item 2 of claim is improperly before this Division, carrier further emphatically asserts that the latter portion of claim is without merit. Since Item 2 of claim was belatedly injected into the dispute and the employees have failed to explain in just what manner the vacation and holiday agreements were violated, carrier has been unable to determine basis therefor. Carrier affirmatively states that it has complied with all provisions of the Vacation and Holiday Agreements and any contention of the employees to the contrary is without merit. In the circumstances carrier requests that this Division disregard the employees' allegation that carrier violated the Vacation and Holiday Agreements.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to Agreement which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties hereto. To grant the claim of the employees in this case would require the Board to disregard the Agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

Carrier has shown claim is barred under Time Limit On Claims Rule and should be dismissed.

Without prejudice to its contention that claim is barred, carrier has established that there has been no violation of the applicable Agreement and claim of employees is without rule support.

Therefore, carrier respectfully requests that claim 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 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.

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 Carrier contends that this claim is barred by the time limit on claims rule in the August 21, 1954 National Agreement, whereas the employees contend that it was properly filed under the provisions thereof governing the filing of claims for alleged continuing agreement violations.

The act of bulletining a vacancy is fully concluded when the bulletin is published. If such bulletin is violative of some requirement of the agreement, it is a concluded violation and there is no continuing violation to support a claim based upon the inadequacy of the bulletin.

Under the provisions of the August 21, 1954 National Agreement this claim is barred because it was not filed within 60 days from the date of the occurrence (the date the bulletin was published) on which the claim is based.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of October, 1965.