

**Award No. 5033**

**Docket No. 4922**

**2-D&TSL-MA-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Machinists)**

**THE DETROIT AND TOLEDO SHORE LINE  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Detroit and Toledo Shore Line Railroad Company violated the Federated Crafts No. 151, working agreement, revised and effective, January 1, 1959, particularly, Rules 10-16-33-40, when on June 3, 1964, at the Diesel Shop, Toledo, Ohio, they abolished Machinist Amstutz's Position, '#1-Inspection', and then on June 4, 1964, they assigned Machinist Apprentice, Mr. Wesley Bella to Machinist Amstutz's Position and to do his work. In so doing, denied the Machinists at the Diesel Shop the right to their work.

2. That Apprentice Bella be removed from the Machinists position, '#1-Inspection'.

3. That the time claims in favor of the Machinists listed hereto, be paid, 8 hours pay at the regular rate, continuously thereon from June 4, 1964.

H. Sanford

J. Walsh

H. Breniser

L. Kelley

H. F. Amstutz

D. Laytart

F. L. Halbert

H. DeCant

**EMPLOYEES' STATEMENT OF FACTS:** 1. On June 3, 1964 The Detroit and Toledo Shore Line Railroad Co., hereinafter referred to as the carrier, abolished Machinist Amstutz's position, identified as "#1-Inspection".

2. On and prior to June 3, 1964, since the inception of diesel locomotive repairs at the diesel shop, Toledo, Ohio, the work on position #1 was performed by machinists.

3. The duties of Position #1-Inspection are to repair and maintain diesel locomotives in accord with the carrier's planned program of maintenance on monthly, quarterly, semi and annual inspections and is not to be construed to mean federal inspector's work.

**Part No. 2** of this dispute is moot as Apprentice Bella was never assigned to Machinist Position #1-Inspection; completed his apprentice training on #1-Inspection with Machinist Walsh in December 1964 and was transferred to another phase of the program; and subsequently resigned from the carrier's service effective February 20, 1965, and is no longer in the carrier's employ.

**Part No. 3** of the dispute is an attempt by the employees to establish a penalty where none exists, either by schedule rules or the facts.

Claim for penalties is for each and every individual machinist on the carrier's seniority roster covering this craft. Such claims are submitted notwithstanding the facts that claimant Amstutz gained a six (6) cent hourly increase in earnings; there were eight (8) machinist positions in existence prior to June 4, 1964, and there were eight (8) machinist positions in existence subsequent to June 4, 1964; all claimants worked prior to June 4, 1964, and thereafter with none of the claimants suffering any loss due to abolishment and establishment of positions by the carrier in exercise of its right to re-assign duties to provide a more efficient and economical operation.

**SUMMARY:** The carrier requests this honorable board to deny the claims of the employees on the basis that the employees have failed to substantiate their allegations in this dispute, whereas the carrier has shown that statements in Part 1 are not factual; that Part 2 has no application in the present due to Mr. Bella no longer employed; and that Part 3 is lacking in support of the facts as stated; and as no violation of any rule of the agreement is in evidence, no foundation exists for a penalty against the carrier.

**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 employees 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.

The claim is that Carrier assigned an apprentice to do the work of an abolished machinist position. The only question is one of proof since the claim will be sustained if the charge is substantiated by the facts.

The evidence presented by Petitioner consists of very brief statements by two apprentices that are identical in form and substantially the same in content. While they set forth the apprentices' opinions and conclusions that they performed the same duties as did the machinist who occupied the position before it was abolished, they do not describe or specify those duties and the amount of time devoted to them.

Without additional facts, the Board simply is not in a valid position in a contested case to determine that Carrier actually has assigned apprentices to fill a machinist position or to do what is considered "work on the floor" or has violated the Agreement in any other respect.

If apprentices are being improperly used, as Petitioner charges, the essen-

tial facts—not contentions, opinions and conclusions—must be set forth in the record with sufficient clarity and particularity to establish the claim. These requirements are not onerous or overtechnical but are manifestly necessary to assure proper evaluation of the claim.

In the present case, there is no evidence that any machinist lost work or compensation as the result of the elimination of a machinist's position and since the record does not establish that any rule has been violated, the claim will be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1967.