

Award No. 5071
Docket No. 4161
2-RF&P-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

That under the current agreement Machinists P. H. Lassiter, W. W. Driskill, G. E. Southward, F. S. Hagel; Machinists Apprentices J. J. Clary, R. D. Stone, Jr., R. W. Hanby, J. R. Wheatley; and Machinist Helpers W. H. Heubi, W. B. Merrill, R. B. Pease, W. H. Turner, Jr., S. L. William and J. E. Riddick were denied holiday pay for Labor Day, September 5, 1960 account of being furloughed on September 6, 1960, and that accordingly the carrier be ordered to pay these employes eight hours pay at straight time rate account of being assigned to work Labor Day, Monday, September 5, 1960.

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 were given due notice of hearing thereon.

This Labor Day, September 5, 1960, holiday pay claim, arising out of a strike against Carrier, involves the following procedural issues: (a) whether the claim filed on behalf of unnamed claimants violated Rule 33 1(a) of the Agreement; (b) whether the claim on behalf of Machinist Helpers and Apprentices were filed within 60 days of the Labor Day holiday in violation

of Rule 33 of Agreement and Section 3, First (i) of the Railway Labor Act as amended; and the following issue on the merits, (c) the question of "available for service" following the holiday.

In regard to the question of violation of Rule 33 1(a) of the Agreement in regard to filing this claim on behalf of unnamed claimants, this Board has on various prior occasions held that where claimants can be easily and readily identified by Carrier, the Agreement is not violated.

Examining the facts in this claim, the initial claim as presented to Carrier was by letter of Local Chairman Shaw, dated October 31, 1960: "I would like to claim one day's pay at straight time, for September 5, 1960 for all the machinist who were furloughed due to the Pennsylvania Railroad strike, . . .".

We feel that stating the claim as the Organization has done herein did not make it difficult for Carrier to identify from its records "all machinist furloughed due to the strike," and therefore the claim as originally set forth as such in this instant claim is not fatally defective, and said contention must therefore be rejected.

As to the second issue in regard to whether or not the claim of Machinist Apprentices and Machinist Helpers was not filed within the 60-day period following, in this instance, the Labor Day holiday, Carrier bases its objection on the original letter of Local Chairman Shaw, referred to herein above, and in which letter, dated October 31, 1960, Shaw said: ". . . for all the machinist who were furloughed. . .". Carrier then refers to General Chairman Guilfoyle's letter to Carrier's Director of Personnel, dated December 17, 1960, in which the General Chairman states: "I am appealing decision of Mr. H. T. Rainey, Jr., Chief Mechanical Officer, as contained in his letter of December 1, 1960, wherein he denies holiday pay for machinists, helpers and apprentices who were furloughed September 6, 1960." Carrier contends that this expanded the claim from Machinist to Machinists, Machinist Helpers and Machinist Apprentices, and thus the claims of Machinist Apprentices and Machinist Helpers were not presented within 60 days of the holiday in question.

General Chairman Guilfoyle's letter of December 17, 1960 clearly shows that the Organization was instituting for the first time the claim of Machinist Helpers and Machinist Apprentices, which presentation was beyond the 60 days time limit period set forth in Article V 1(a) of the '54 Agreement. Therefore, the claim for all the Machinist Helpers and Machinist Apprentices must be dismissed for failure to comply with the mandatory requirements of said Article V 1(a) of the '54 Agreement.

Concerning the merits of this dispute in regard to the claim of only the Machinists herein involved, Carrier's contention that said Machinist claimants were not "available for service" because of failure to comply with Article IV of August 21, '54 Agreement (said Article IV had been incorporated into Rule 43 of the parties' agreement) has been rejected by this Division in Award 5061, and for the reasons stated in that Award, the claim of all the machinists only in this claim will be sustained.

AWARD

- (a) Claim of Machinist Helpers and Machinist Apprentices dismissed.
- (b) Claim of Machinists sustained.

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

ATTEST: Charles C. McCarthy
Executive Secretary

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

[See Award 5061 for Carrier Members' dissent.]