

Award No. 5152

Docket No. 4970

2-C&NW-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. On August 31, 1964, the Chicago and North Western Railway Company in violation of the Agreement, assigned Machinist Helper D. L. Clark to position of Machinist operating a burnishing lathe in Clinton, Iowa Machine Shop.

2. That accordingly, the Chicago and North Western Railway Company be ordered to compensate Machinist George Seely, Clinton, Iowa, eight (8) hours at Machinists' pro rata rate and one-half from August 31, 1964, until the Agreement is complied with.

EMPLOYEES' STATEMENT OF FACTS: Mr. George Seely was a machinist employed by the carrier on the 7:00 A. M. to 3:30 P. M. shift at Clinton, Iowa. Machinist Seely, hereinafter referred to as the claimant, is shown on the seniority roster published on July 1, 1964, as number 7 on the machinist list.

On August 31, 1964, Machinist Helper Don L. Clark was placed on a machinist's position with hours of 3:30 P. M. to midnight, with one-half hour for lunch. Helper Clark was hired on August 21, 1963, and is shown as number 13 on the Machinist Helpers' seniority roster.

Machinist Helper Don L. Clark was not a machinist nor was he eligible for upgrading under the provisions of the memorandum of agreement between the organization and the carrier dated August 11, 1953.

On August 24, 1964, Superintendent Powers wrote jointly to General Supt. Weatherall and the undersigned, requesting approval to advance Helper Clark. Since Mr. Clark had only one (1) year of service, I could not approve him to be advanced as to do so would have violated the agreement. I so informed Supt. Powers by letter dated August 25, 1964. Notwithstanding these

sole item relied upon by the organization during the course of handling of this case on the property, had no such force and effect.

The carrier submits that the claim in this case, not being supported by the provisions of the controlling agreement, should be denied in its entirety. If, however, despite the fact that there is no violation of this agreement this board for any reason holds that the claim in this case has any merit whatsoever, then clearly there is no basis for a sustaining monetary award in this case. The claimant in this case was at all times fully employed on a machinist position paying the same rate of pay of the position he demands. The position actually filled by Mr. Clark was in fact bulletined, and would have been awarded to claimant had he bid for it. This he elected not to do. Additionally, subsequently local forces offered to permit claimant to take the job if that would satisfy the local forces. This offer was refused. In the circumstance claimant clearly has suffered no loss or damage from the awarding of the position to Mr. Clark and is entitled to no damages as the result of Clark being employed.

In any event, there is no basis for the claim for overtime rate. It is fundamental that the penalty rate for time not worked is the straight time rate, not the overtime rate.

The carrier submits that the claim in this case should be denied in its entirety.

(Exhibits not reproduced.)

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.

Despite obvious reluctance, in a difficult situation brought about because of the unavailability of machinists eligible for employment under applicable rules of the Agreement between the parties to this dispute, we find that there was a violation of said rules by Carrier as charged in Paragraph 1 of the Complaint.

In Paragraph 2 of the Claim, it is alleged that Carrier should be ordered "to compensate Machinist George Seely, Clinton, Iowa, eight (8) hours at Machinists' pro rata rate and one half from August 31, 1964, until the Agreement is complied with," — the above mentioned date being when Carrier violated the Agreement by assigning Machinist Helper D. L. Clark to position of Machinist in the Clinton, Iowa, Machine Shop.

The Second Division has often held that, in the absence of a showing that Claimant suffered loss in pay, a money claim is not valid. Here the job was

bulletined, yet there is no record that Claimant Seely bid for it. Also, it appears that said Claimant has been steadily employed as a machinist and that he has suffered no loss in pay; neither is there a showing that he would have been called to work at overtime. See Second Division Awards 3672, 3967, 4083, 4086 and 4112.

Therefore, it is our conclusion that Employees' first claim in this dispute should be sustained, but that the second claim must be denied.

AWARD

Claim 1 is sustained.

Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.