



Award No. 5489

Docket No. 5186

2-SOU-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James E. Knox when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That on January 15, 1965, the work contracted to the class and craft of Machinists at the Carrier's Knoxville, Tennessee Diesel Shop was turned over to foremen, carmen, laborers and others not covered by the controlling agreement, and that as a consequence thereof, Machinists T. T. Copeland, James H. Bradford, C. F. Benson, W. E. Love, B. H. Goosie, C. E. Webb, F. W. Varner, Kenneth E. Howard, W. K. Rogers and L. T. Roberts were wrongfully furloughed.

That accordingly, the Carrier be ordered to restore this work to the class and craft of Machinists, and that Machinist T. T. Copeland be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 26, 27, 28 and 29, 1965;

James H. Bradford be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 25, 26, 27, 28, 29. February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26. March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 1965 and continuing;

C. F. Benson, be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 25, 26, 27, 28, 29. February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26. March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 17, 1965 and continuing;

W. E. Love be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 25, 26, 27, 28, 29. February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26. March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 1965 and continuing.

B. H. Goosie be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 25, 26, 27, 28, 29. February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 17, 18, 19, 22, 23, 24, 25, 26. March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 1965 and continuing;

C. E. Webb be returned to his former position with pay for all time lost as follows: January 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31. February 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28. March 1, 2, 3, 6, 7, 8, 9, 10, 13, 1965 and continuing;

F. W. Varner be returned to his former position with pay for all time lost as follows: January 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31. February 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28. March 1, 2, 3, 6, 7, 8, 9, 10, 15, 1965 and continuing;

Kenneth E. Howard be returned to his former position with pay for all time lost as follows: January 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31. February 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28. March 1, 2, 3, 6, 7, 8, 9, 10, 13, 1965 and continuing;

W. K. Rogers be returned to his former position with pay for all time lost as follows: January 19, 20, 21, 22, 25, 26, 27, 28, 29. February 1, 2, 3, 4, 5. March 6, 7, 8, 9, 10. May 3, 1965 and continuing;

L. T. Roberts be returned to his former position with pay for all time lost as follows: March 25, 1965 and continuing;

and in addition, be made whole for all fringe benefits lost, such as vacation, holidays and insurance premiums.

EMPLOYEES' STATEMENT OF FACTS: T. T. Copeland (seniority date 4-22-1943), James H. Bradford (seniority date 7-17-43), C. F. Benson (seniority date 6-15-44), W. E. Love (seniority date 2-24-43), B. H. Goosie (seniority date 3-14-44), C. E. Webb (seniority date 8-30-55), F. W. Varner (seniority date 7-22-46), Kenneth E. Howard (seniority date 3-11-46), W. K. Rogers (seniority date 5-5-43) and L. T. Roberts (seniority date 8-2-43), hereinafter referred to as the Claimants, were regularly employed by the Southern Railway Company, hereinafter referred to as the Carrier, as Machinist at the Knoxville, Tennessee Diesel Shop and were furloughed at the close of their respective shifts effective January 15, 1965.

While employed Claimants were assigned to various shifts on an around the clock forty-hour week basis, and prior to being furloughed performed all the duties required of Machinists, including but not limited to the following:

Locomotive inspection as required by the Interstate Commerce Commission, Bureau of Locomotive Inspection and by rules of the Carrier.

As to the demand that the claimants be made whole for all fringe benefits lost, such as vacations, holidays and insurance premiums, all claimants have been paid for all vacations and holidays due them. With respect to insurance premiums, attention is directed to Second Division 4866, Referee McMahon, in which the Board held that:

" * * * We make no finding in reference to insurance premiums for hospitalization and life insurance. We can find no requirement in the agreement between parties which makes any reference to payment of premiums by carrier. Such claim for insurance premiums is not a wage loss as described in Rule 31 of the agreement."

There is no reason why the Board should not follow the reasoning in this case as that followed in Award 4866 because the Board has no authority to make an award involving insurance premiums.

Thus the evidence is clear that the Board is without authority to do what is demanded in Part 2 of the claim.

CONCLUSION

Carrier has shown that:

(a) Claims which the Association here attempts to assert are not the claims presented and handled in the usual manner on the property and are barred and the Board has no jurisdiction over them and should dismiss them for want of jurisdiction.

(b) No work has been contracted to machinists and claimants were wrongfully laid off.

(c) All work being performed at Sevier Yard, Knoxville, Tenn., is being performed in accordance with the terms of the agreements here controlling. There definitely is not a sufficient amount of work at Sevier Yard, Knoxville, to justify employing a machinist.

(d) The Board is without authority to do what is demanded in Part 2 of the claim.

Claims being barred and the Board being without jurisdiction to do what is demanded in Part 2 should be dismissed by the Board for want of jurisdiction.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Association's submission reserves the right after doing so to make reply thereto and submit any other evidence for the protection of its interests.

(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 were given due notice of hearing thereon.

On January 16 and 18, 1965, the carrier laid off the machinists at its Sevier Yard in Knoxville, Tennessee. The employes, on behalf of those machinists who want to continue to work at Knoxville, claim there is still work at this point which should be performed by these machinists.

The issues raised by this claim are controlled by Award 2-5487, and the findings of that Award are hereby adopted as findings in this case. Within the framework of that award, we specifically find that the claim submitted to this Board is the same claim that was handled in the usual manner on the property; that there are mechanics employed at this point; that the evidence is sufficient to show that there is a bona fide dispute about whether there is sufficient work to justify employing machinists at this point; and that the carrier's unjustified refusal to participate in the joint check required by Article IV of the agreement of January 27, 1965, delayed this determination to the possible detriment of the employes.

AWARD

The parties are directed to conduct a joint check of whether there is now, and whether there was at the time a joint check should have been made, sufficient work to justify employing machinists at this point and to report the results of that check to this Board within sixty (60) days in accordance with the above findings. Pending receipt of such report, the proceedings before this Board will be continued.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1968.