

Award No. 5565
Docket No. 5439
2-PC-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE PENN CENTRAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That J. W. Ferguson, Machinist, is being improperly compensated for his services beginning August 27, 1963, and continuing so long as he is required to perform service outside his seniority district.

2. That under the provisions of Rule 2-A-1(e), fourth paragraph, J. W. Ferguson is entitled to an additional three (3) hours' pay at the straight time rate of the position he holds, for each day he is required to work outside his seniority district.

3. That L. J. Wareham, Machinist, was improperly compensated while filling the vacation vacancy of J. W. Ferguson, from August 16, 1963 to August 26, 1963, inclusive.

4. That under the provisions of Rule 2-A-1(e), fourth paragraph, L. J. Wareham is entitled to an additional three (3) hours' pay at the straight time rate of the position he was filling from August 16, 1963 to August 26, 1963, inclusive.

5. That accordingly the carrier be ordered to additionally compensate J. W. Ferguson and L. J. Wareham in the amount of three (3) hours' pay at the straight time rate of the position they held, as provided for in Rule 2-A-1(e), fourth paragraph.

6. In the event the Fuel Truck position has been filled by other employes under the provisions of Rule 2-A-1, 2-A-5 or 3-D-4, the claim should be sustained for the incumbents of the Fuel Truck position at Pitcairn Enginehouse Seniority District.

EMPLOYEES' STATEMENT OF FACTS: J. W. Ferguson and L. J. Wareham, hereinafter referred to as Claimants, are regularly employed and are assigned at the Pennsylvania Railroad Company's (hereinafter referred to as the Carrier) Enginehouse at Pitcairn, Pennsylvania.

IS REQUIRED TO GIVE EFFECT TO THE SAID AGREEMENTS AND TO DECIDE THE PRESENT DISPUTE IN ACCORDANCE THEREWITH.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said Agreements, which constitute the applicable Agreements 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 to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto 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 any such action.

CONCLUSION

The Carrier asserts that the operation about which the Employees here complain is not in violation of any rule of the Schedule Agreement, and the Claimants are not entitled to the compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(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.

A careful and most thorough perusal of the rather voluminous record in this case discloses that petitioner places sole reliance in support of the claim for additional compensation on the fourth paragraph of Rule 2-A-1(e) of the existing collective agreement (see petitioner's comment under "Finally", pages 13 and 14 of their rebuttal statement), although there is other argument and evidence designed to support the allegation that the assignment at issue is improper. We will, therefore, give consideration only to the specific claim which has been presented to us for disposition. Thus, an analysis of the fourth paragraph of Rule 2-A-1(e) is in order.

This agreement is obviously intended to provide additional compensation to an employe who is moved from the position to which assigned to another

position, at the instance of Management. In this case, the position at issue was bulletined on August 2, 1963. See Employees' Exhibit IV C. The claimant, Ferguson, bid for it. It was assigned to him by Bulletin No. 12, dated August 13, 1963. See Employees' Exhibit IV B. To hold that he was moved from one position to another, at the instance of Management, under these circumstances, would be to torture the language of the agreement.

The other claimant, Wareham, was furloughed when recalled for vacation relief and had no position to be transferred from. Rule 2-A-1(e) will not sustain this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1968.