

Award No. 5628
Docket No. 5453
2-N&SS-MA-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**THE NEWBURGH AND SOUTH SHORE
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Newburgh and South Shore Railway Company violated the controlling agreement when it improperly assigned Machinist Helper K. Wisniewski to a regular machinists' position on March 3, 1966 and has continued to violate the agreement each day thereafter that Machinist Helper has been allowed to remain on a machinist position.

2. That accordingly the Newburgh and South Shore Railway Company be ordered to compensate Machinists Frank P. Cech, Robert L. Kostura and Anthony R. Ambrosetti at the time and one-half rate in such a manner that such compensation will be equally divided among them for each day Machinist Helper K. Wisniewski is assigned to a machinist position beginning March 3, 1966 and continuing until claim is adjusted.

EMPLOYEES' STATEMENT OF FACTS: Claimants are employed as machinists at the Carrier's shop in Cleveland, Ohio and are carried on the machinists' seniority roster at that point with seniority dates as follows:

Name	Seniority Date
1. F. P. Cech	11-11-42
2. R. L. Kostura	1-1-60
3. A. Ambrosetti	5-4-63

Machinist Helper K. Wisniewski is carried on the machinists helpers' seniority roster at Cleveland, Ohio with a seniority date of 9-13-65.

"Any man who has served an apprenticeship or who has had four (4) years experience at the machinist's trade and who, by his skill and experience is qualified * * *"

It is hereby affirmed that all data submitted in support of the Carrier's position has been submitted in substance to the employes or duly authorized representatives thereof, and made a part of the particular question in dispute.

(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.

The fundamental facts involved in this dispute are not in issue. On February 23, 1966, Carrier advertised for bid on a new machinist position in accordance with Rule 14 of the applicable Agreement, and the only bid entered was by an employe classified as a Machinist Helper, who was then assigned to the position by Carrier. Petitioner contends that Carrier violated Rules 14 and 25 of the Agreement by accepting an application for the disputed position from a Machinist Helper and ultimately awarding the position to him. Petitioner seeks compensation at the punitive rate on behalf of the named Machinists to be divided equally among them for each day that the Machinist Helper was assigned to the disputed position from March 3, 1966.

Carrier contends that the Machinist Helper was the only available employe qualified to perform the particular work of the new position which involved automotive vehicle repairs. Furthermore, none of the claimants submitted a bid as required by Rule 14, and the only bidder was the Machinist Helper, who allegedly had the equivalent of four years' experience as a machinist gained through prior employment as an automotive mechanic.

Analysis of the applicable provisions of the Agreement clearly reveals that when new jobs are created in the respective crafts, the oldest employes in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs. Moreover, none but mechanics or apprentices regularly employed as such shall do mechanic's work in accordance with the particular rules of each special craft with certain exceptions not relevant in this dispute. The Classification of Work Rules (Rule 48 and Rule 50) for Machinists and Machinist Helpers are separate and distinct as to the particular duties of each classification, and the work involved herein clearly comes within the purview of Rule 48 covering Machinists.

Hence, the pivotal question is whether Carrier violated the Agreement by accepting the application of the Machinist Helper for a new position bulletined for bid by employes in the Machinists' Craft. In spite of the fact that no machinist bid for the disputed position, Carrier's unilateral accept-

ance of the bid submitted by an employe classified as a Machinist Helper was violative of the Agreement. (Awards 5142 and 4755)

Paragraph 2 of the Claim seeks compensation for named machinists at the time and one-half rate from March 3, 1966 until the claim is adjusted for all time that the Machinist Helper was employed in the disputed position. The record discloses that none of the claimants bid for the bulletined position and all were steadily employed throughout the period encompassed by the claim. Furthermore, there is no evidence to support a finding that the work of the disputed position would have been performed by claimants on an overtime basis under any circumstances. Therefore, paragraph 2 of the Claim must be denied. (Award 5152)

AWARD

Paragraph 1 of the Claim is sustained.

Paragraph 2 of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1969.