

Award No. 6085

Docket No. 5894

2-GM&O-CM-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the current agreement Carman H. M. Talley was improperly compensated at the Freight Carman's rate of pay for work performed on engines October 7 and 9, 1968.

2. That accordingly the Carrier be ordered to additionally compensate Carman Talley the difference in the Freight Carman's rate of \$3.4962 per hour for the 8 hours service on each of the two days in question and the rate of \$3.5855 which is the rate of Machinists whose work he was performing, or not less than the Carman Engine Carpenter's rate of \$3.5451.

EMPLOYEES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, maintains a train yard, freight car repair track and locomotive shop at Bogalusa, Louisiana. There were two machinists employed at the locomotive shop up to and including October 6, 1968 at which time their jobs were abolished and the men paid a separation allowance. Subsequent to that date carmen have been assigned to perform machinists' work on locomotives. For such work they are paid at the freight carman's rate of pay. For work on engines which the carmen had normally performed prior to abolishing the machinists' positions they are paid at the carman engine carpenter's rate of pay.

Carman H. M. Talley, hereinafter referred to as the claimant, is employed by the carrier at Bogalusa. On October 7 and 9, 1968 he was assigned to go to the locomotive shop and work on locomotives 1510, 630, 623 and 1117, adjusting brakes, testing brakes, checking oil, re-assembling engines to operate in unison and inspecting and testing after re-assembling. The claimant was paid at the Freight Carman's rate of pay, \$3.4962 per hour.

Prior to October 7, 1968 the machinists adjusted brakes, tested brakes and performed all the work on locomotives except that normally performed

chanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.' We think the desired result can properly be accomplished in this case by a recognition that the degree and extent of locomotive repair work done by these claimants at Hosington has been such that it did not justify employing other mechanics. Consequently, we hold that the instant claim lacks support."

(ES)

CONCLUSION

1. No machinists or engine carpenters are employed at Bogalusa, therefore, rule 15 — Filling Vacancies — cannot be applicable. Rule 15 relates only to the filling of a vacancy of another employe and there being no machinists or engine carpenters employed there can be no vacancy.

2. This board has twice considered and denied similar claims filed by carmen in Awards Nos. 3935 and 3885.

3. The record shows that the work involved is not engine carpenter's work (Rule 503).

4. The amount of machinist's work necessary at Bogalusa — only two hours' work in a forty-one-hour period as shown by a joint check made with representatives of the machinists' organization — is very trivial.

5. For many years carmen at Union City, Tennessee and Cairo, Illinois, as well as other terminals, have worked on diesel locomotives without any claim being made for the higher rate of pay.

The claim is not supported by the rules of the agreement or past practice and should be denied.

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 employees 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.

Claimant Talley, who is assigned to the third shift in the train yard at Bogalusa, Louisiana, worked on locomotives at the North shops on October 7th and 9th, 1968. He worked on several locomotives, adjusting brakes, testing air, checking oil, water, re-assembling engines to work in unison and inspecting and testing them after being re-assembled. This was work normally performed by two machinists before their positions were abolished on October 6, 1968. Subsequent to that date Carmen have been assigned to perform machinists work on locomotives.

Claimant for the work performed was paid the freight Carman's rate of pay, and is demanding the differential between that and the higher rate

of pay of a machinist. He is basing his claim on Rule 15 of the Agreement which reads as follows:

"When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate, but if required to fill, temporarily, the place of another employee receiving a lower rate, his rate will not be changed."

Carrier contends that Rule 15 is not applicable to the instant dispute, that because of the small amount of locomotive work required at Bogalusa, the machinists positions were abolished and that since that time the work on locomotives has been performed by carmen in accordance with Article VII of the August 21, 1954 Agreement, which reads as follows:

"At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

There is no dispute between the parties regarding the use of Carmen to perform work on locomotives. The only dispute is the rate of pay.

Carrier refers us to Award No. 3935 (Johnson) that this same claim was considered and denied. There, a claim was made by Carmen at Carrier's Mobile, Alabama repair facilities where no boilermakers are employed, that Carmen be paid the boilermaker's rate of pay because they performed work classified as boilermaker's work. Reliance was made on Rule 15 by the Organization to support their claim. The Board found:

"The employes' argument is that while performing the work of higher rated employes claimant was filling the place of a higher rated employe, within the intent of the rule.

The Carrier contends that Rule 15 relates only to the filling of definite vacancies, that throughout the long existence of the two rules mechanics at Union City and many other points have been doing such work and that no claim has heretofore been made under Rule 15 for the higher rate.

* * * * *

'Place' means 'position' and 'another' means 'one other' — 'some different person or thing' Websters' new Collegiate Dictionary. Consequently, 'to fill the place of another employe' means to occupy the definite position of some other individual employe. It might perhaps be argued that the language was loosely used and was intended to refer to the kind of work done by a certain class of employe, and not merely to the specific position of a definite employe. But that is not possible, since apparently, as originally adopted, the rule contained the title "Filling Vacancies", which relates to definite positions rather than to kind of work. Consequently its meaning, as originally adopted, was not ambiguous, which presumably explains the lack of prior claims and the absence of any established practice contrary to literal meaning.

This Board, like the parties, must accept the rule as adopted by them and as mutually accepted by them through so many years."

We agree with Carrier that the facts in the first portion of this claim are the same as those in Award 3935. No machinists are employed at Bogalusa, hence there could be no vacancy for a machinist. Claimant therefore could not be filling a vacancy and Rule 15 is not applicable. The work done by Claimant is only incidental to his main duties and responsibilities.

Insofar as the second portion of the claim is concerned, that is the request for the Carman Engine Carpenter's rate of pay, we have examined Rule 503 of the Carmen's Special Rules and find that the work classified therein as Engine Carpenter's work is not the type of work involved in this dispute. We will therefore deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1970.