

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

Dispute: Claim of Employees:

1. That under the current agreement Carrier failed to call Machinist C. E. Neal for relief work December 6, 1971 to January 4, 1972.
2. That accordingly, the Carrier be ordered to compensate Claimant Neal in the amount of one hundred and seventy-six (176) hours at the straight time rate of pay for that period of time at the hourly rate of \$4.75.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 27 $\frac{1}{2}$ of the controlling agreement provides, in pertinent part:

"(b) Furloughed employees deserving to be considered available to perform such extra and relief work will notify the proper offices of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work ...

"(c) Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service."

Along with a number of other employees of the Machinist's craft at Huntington Shops, Claimant was furloughed effective October 11, 1971 and was subsequently recalled to service for a regular assignment effective January 4, 1972.

It is not disputed that on December 6, 1971 an employee who is junior to Claimant was called for and assigned to relief work.

The claim herein is based on contention by Claimant and his Organization that Claimant had indicated his desire to participate in relief work during the week of October 4, 1971 when in accordance with custom, Gang Foreman Hinerman made available to all employees under his supervision, including Claimant, appropriate forms to be completed and returned to him, and Claimant did fill out and submit said form signifying his desire to be so called.

Carrier contends that no such request was received.

Employees concede that copy of Claimant's request was not received by local chairman, but contend that while it has always been the custom in this shop to provide one copy to the local committeeman, in this instance all copies were given to the Gang Foreman at his request and "local management mishandled or misplaced" the completed forms.

The claim therefore turns on the conflict between the parties as to whether supervision was in fact handed the work request by Claimant. The following elements in the record bear on determination of this conflict:

(1) Apparently copies of requests of all other employees are acknowledged to have been received by both local chairman and foreman.

(2) Carrier contends that Claimant visited the shop several times between October 11, 1971 and January 4, 1972 in connection with appearances at the Main Office Building to register for Railroad Unemployment and was in a position to note that employees junior to him were at work there yet made no complaint, indicating that he did not desire the relief work in question. Employees deny that he went to other than the Office Building on these occasions.

(3) Employees include in their Submission a statement by five employees, submitted on September 27, 1972, stating that Claimant handed in two copies of a work request to foreman on October 7, 1971.

(4) In a statement dated February 4, 1972, Gang Foreman Hinerman states the following:

"TO WHOM IT MAY CONCERN:

During the week of October 4, 1971, a supply of 27½ application forms were given me by the clerical staff for handling with the machinists working in the Tool Machine Shop which I am the supervisor. Machinist G. E. Neal was one of the machinist assigned under my supervision and worked the week of October 4, 1971.

Two (2) copies of Form 27½ were made available to all machinists under my supervision working the week of October 4, 1971.

"When the machinists completed the forms they gave me one (1) copy and gave the local gang committeeman of machinist craft one (1) copy. At the close of the work week Friday, October 8, 1971, I personally delivered all Form 27 $\frac{1}{2}$ copies received to the Asst. Chief Clerk's Office.

I do not know with absolute certainty if Machinist C. E. Neal's Form 27 $\frac{1}{2}$ was handled since no effort was made by me to check the forms. I do know at least one (1) machinist working did not make out a form because he told me.

(s) Harold B. Hinerman
2/4/72"

Weighing the foregoing, we conclude that while it is impossible to resolve the underlying conflict definitively within the limitations of a written record of assertions and counter-assertions, a reasonable probability emerges from the total record that (a) the request was made out and submitted by the Claimant but (b) went astray. But the record also reflects a strong probability that Claimant was in a position to know of and correct this mishap within about a week after it occurred. We do not believe that he should profit by his failure to have ended the injury to himself in the face of opportunity to do so.

Accordingly we conclude that Claimant is entitled to one-fourth of the claim and shall so award.

A W A R D

Claim is sustained to the extent that Carrier shall compensate Claimant in the amount of forty four (44) hours at the straight time hourly rate of pay of \$4.75.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of February, 1974.