

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
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(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company, North Little Rock, Arkansas, violated the controlling Agreement, particularly Rules 26(a) and 52(a), when General Foreman B. D. Landers dressed a bearing on one of the large lift screws of the drop table and then applied its respective bearing.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist D. M. Chisam in the amount of four (4) hours at the punitive rate of Machinist for Monday, September 8, 1975, when he was denied the right to perform machinists' work on the drop table at North Little Rock, Arkansas.

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.

The Organization has progressed the instant claim for four (4) hours at the punitive rate on behalf of Claimant, a Machinist employed by the Carrier in North Little Rock, Arkansas. The Claim alleges that the Carrier violated Rules 26(a) and 52(a) of the controlling Agreement when General Foreman B. D. Landers dressed a bearing on one of the large lift screws of the drop table, located at Carrier's 400 Yard Ramp at North Little Rock, Arkansas, and thus Claimant was denied the right to perform such work. The General Foreman finished this task, which had been assigned to Machinist L. E. Wilson, in approximately thirty (30) minutes. Machinist Wilson was

not present when the General Foreman performed the work since he had been sent to the storeroom. However, the Machinist Apprentice R. L. Burke was present when the work was performed.

It is the Carrier's position that the General Foreman performed the work of dressing and applying the bearing to demonstrate to the assigned machinists (in fact to the assigned apprentice only, since Machinist Wilson was at the storeroom) the proper way to dress and apply these bearings. The Carrier contends that the Organization has not met its burden of proving that General Foreman Landers did any more than function as a supervisor as specifically permitted in paragraph two of Rule 26(a). Rule 26(a) reads as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work."

Moreover, the Carrier contends that no rule supports a claim for payment for four (4) hours' pay when the disputed work required but thirty (30) minutes to perform, or for payment at the punitive rate for a claimant who performed none of the work upon which the claim is based.

The Organization asserts that the work in question belongs to the Machinists' Craft pursuant to Rule 52(a) of the controlling Agreement, Machinists' Classification of Work Rule. They also claim that Rule 26(a) prohibits any employee other than "mechanics or apprentices regularly employed as such" from performing mechanics' work. It is also the Organization's contention that paragraph two of Rule 26(a) was modified by Case No. A-7030, dated September 25, 1964, i.e. Article III - Assignment of Work - Use of Supervisors. Finally, the Organization contends that the Board has the authority to assess penalties to "police the rules of the Agreement", as stated in Second Division Award No. 1369, and therefore the claim for four (4) hours' pay at the punitive rate is not excessive.

It is clear from a careful reading of the record, that the work in question undoubtedly belonged to the Machinists' craft. Rule 26(a) specifically states, "None but mechanics or apprentices regularly employed as such shall do mechanics' work". It also provides that "this rule does not prohibit foremen in the exercise of their duties to perform work". It is our opinion that the foreman was not exercising his supervisory duties, but was in fact, performing Machinists' work while the Machinist, who had been assigned to complete this work, was at the storeroom. Carrier, in its letter of April 7, 1976, stated that "a supervisor's job is to determine that the work is done correctly and to instruct employees in the proper manner of performing work". This Board unquestionably agrees with this assertion.

However, General Foreman Landers labored for thirty minutes dressing and applying a bearing. There is no evidence in the record that the Machinist and Apprentice were having any difficulty performing their work, nor is there any evidence that either of them requested the Foreman's assistance or instruction. General Foreman Landers thus did more than instruct or supervise Machinists.

A preponderance of the evidence of record in the instant dispute, clearly establishes that the General Foreman performed Machinists' work on the drop table at North Little Rock, Arkansas on September 8, 1975, and did not, as contended by the Carrier, merely perform his duties as a Supervisor. Rather, he performed the work himself, which work was reserved to Machinists by Rule 26(a). Under the factual circumstances present here, there was a violation of the controlling Agreement. Accordingly, the claim will be sustained. However, as stated in numerous Awards of this and other Divisions of the Adjustment Board, the pro rata rate, not the punitive rate, is the proper rate of compensation for work not performed in those claims such as the one before us. Thus, we will sustain the claim at the pro rata rate. (cf. Second Division Awards Nos. 6187, 4416, 6359).

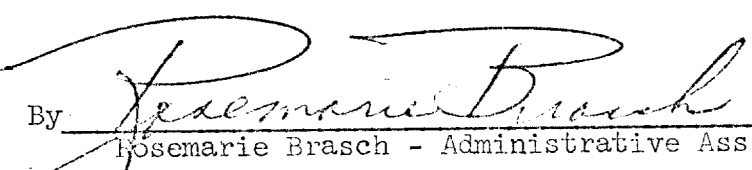
A W A R D

Claim sustained per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1978.