

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12943
Docket No. 12716
95-2-93-2-71

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(International Association of Machinists &
(Aerospace Workers, AFL-CIO,
(District Lodge No. 19
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"1. The Carrier violated Rules 27 and 52 of the controlling Agreement dated April 1, 1945, when they assigned a Foreman to perform Machinist duties on May 24, 1992, at the Carrier's Brooklyn Shop.

2. That accordingly, the Carrier be ordered to compensate Machinist Phil Daley (hereinafter referred to as Claimant) four (4) hours wages at the current rate of pay \$14.55 per hour for failure to call Claimant to service on May 24, 1992."

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.

The Organization contends that on Sunday, May 24, 1992, at approximately 1 p.m., the Carrier assigned or otherwise permitted a Foreman to remove a head from the engine block on John Deere tractor #12 at the Carrier's Brooklyn Shops. These facts are not disputed in the claim handling procedure.

The Organization argues that this work was improperly performed by a Foreman and should have been assigned to a Machinist. The Organization points to Rule 27, Assignment of Work, which states in pertinent part as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per Special Rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen from performing work in the exercise of their duties. . . ."

The Organization also refers to Rule 52, Classification of Work, which states in pertinent part as follows:

"Machinists work shall consist of . . . building, assembling, maintaining, dismantling or installing . . . engine (operating by steam or other power. . .)."

The Organization's simple position is that the work involved should properly be assigned to a Machinist; Machinists are assigned to the Brooklyn Shops; and there is no basis to permit a Foreman to perform the work in question.

In response, the Carrier offers a number of defenses, none of which is convincing to the Board. The Carrier states:

". . . the work in dispute was performed at Brooklyn Shop on a Sunday, a point where there is not sufficient work to justify employing a Machinist; that the Organization failed to meet their burden of proof by not providing specific information as to exactly how much time was spent by Foreman Economy performing the task; that the work required no special skills or tools; that the Classification of Work Rule No. 52 of the Schedule Agreement is general in nature and does not reserve the disputed work to the Machinists' Craft to the exclusion of all others; and that Rule 15 - Promotions, provides for Foremen to do the work. . . ."

As to the absence of Machinists on a Sunday, the Carrier apparently refers to Rule 27, which permits mechanics' work by foreman "at points where no mechanics are employed" and Rule 15, which states "Foreman may perform mechanics' work at points where there are no mechanics employed under their supervision." Considering that Machinists are regularly assigned at the Brooklyn

Shop, the Board finds it disingenuous to suggest that Foreman are somehow free to perform mechanics' work on a day on which such employees are not regularly scheduled. Followed to its extreme, and assuming a Monday-Friday regular work week, this would mean that Foreman could perform any and all work on Saturdays and Sundays. The cited Rules are hardly intended for this purpose.

As to the time spent in the work, the Carrier makes no claim as to a de minimis situation, so it can only be assumed that at least a modest amount of time was involved. The Carrier does not explain the significance of whether or not special skills or tools are involved.

The Carrier suggests that Rule 52 is "general in nature". Without analyzing this point further, suffice it to say that the Rule does refer to the type of work in question; and no affirmative defense is raised as to the work being regularly performed by other crafts. More significantly, there is no assertion that such work is performed as part of the regular work of a Foreman.

The Claim has merit. The remedy is limited, however, to payment to the Claimant of four hours' straight time pay.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August 1995.