Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13912
Docket No. 13789
07-2-05-2-41

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated Agreement dated August 20, 2004, between the International Association of Machinists, District 19 and Union Pacific Railroad Company when it failed to maintain the required number of Machinists positions at its North Little Rock Locomotive Facilities during the agreed to subcontracting period of August 1, 2004 until July 31, 2005.

That the Union Pacific Railroad Company be ordered to compensate Claimants E. B. Beasley, J. D. Jordan, R. W. Simpson, E. E. Boyd, H. R. Miller, W. E. Stute, J. D. Beene, S. G. Blake, J. R. Rogers, K. M. Steele, J. D. Scott, H. A. Cloyes, D. R. Englert, D. R. Nicholson, G. P. Bryan, R. M. Stanton., W. M. Hillman, G. D. Hanks, T. L. Johnson, J. M Pack, J. J. Zack, R. G. Marr, R. L. Powers, W. H. Smith, Jr., M. J. Andis, C. J. Zakrzewski, D. E. Pender, C. L. Wirges, D. J. Larsen and L. M. Shestak (hereinafter referred to claimants) an amount equal to the number of regular work hours that would have been worked by machinists had the Carrier maintained the appropriate number of machinists positions pursuant to the provisions of the Agreement dated August 20, 2004."

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 were given due notice of hearing thereon.

The Parties reached an agreement that stated that, for the period of August 20, 2004 through July 30, 2005, the Carrier would be permitted to subcontract locomotive repair and that "the number of machinists' positions at the locomotive shops listed in Section 1 above will not be reduced below the payroll as of July 31, 2004." In this case the Organization stated that the Carrier violated this agreement and made such claims as are reproduced above.

The Organization argued that during the period of this agreement, eight (8) positions became vacant and that none was replaced. It was the Carrier's position that it hired apprentices to fill these positions. The Organization states that apprentices must complete a 732-day training program and cannot fill a machinists position until such time. The Organization states that in the recent past the Carrier had hired journeyman machinists from applicants who meet the criteria of Rule 51, yet the Carrier ignored repeated requests to hire journeymen/machinists at the North Little Rock facility. Apprentices are maintained on a separate roster. The Organization further noted that, if you look at the Carrier's website, there were no notices for the Little Rock facility. The Organization gave a lot to the Carrier in allowing the subcontracting and the Organization only wants what it is entitled to. Apprentices are for future vacancies three years down the road, not for an immediate need. Given the above, the claim must be sustained.

The Carrier states the Organization must prove that the number of active machinists at the Carrier's Little Rock facility was reduced below the number of active machinists working there on July 31, 2004. In addition the Organization is

obligated to prove that the Carrier did not make a good faith effort to fill any allegedly vacated positions. Section 3 of Par. 2, Page 2 of the August 20, 2004 Agreement sets for the Parties' understanding regarding maintenance of machinist staffing levels at the 17 named locomotive shops.

Section 3:

> "During the twelve (12) month or eighteen (18) month period, as applicable, and for three (3) months thereafter, the number of machinist's positions at the locomotive shops listed in Section 1 above will not be reduced below the actual number of active machinists at each such shop on the payroll as of July 31, 2004. It is understood that the number of active machinists at such shops may be adjusted pursuant to transfers made in accordance with applicable agreements, conditions, etc. It is recognized that, if an employee is temporarily off due to illness, etc., the position would not be required to be filled during the temporary absence. Also, when a position is vacated on permanent basis, the parties recognize the time taken to fill the vacancy will be consistent with how vacancies are filled on a system basis, i.e., as promptly as possible. Unless otherwise agreed, if such vacancies are not filled within four (4) months at locations where locomotives are being sent out to a third party, the Organization may file a claim for appropriate relief, in which case it must demonstrate that the Carrier has not made good faith efforts to fill such positions."

Of the eight (8) positions cited by the Organization, four (4) were not active employees as of July 31, 2004. Of the four (4) remaining, the Carrier had filled six positions within the machinists' craft. The Organization argued that out of the six, five were apprentices. The Carrier states that employees who are not actively working on July 31 would not be counted toward the number of vacancies that needed to be filled. In contract interpretation arbitrators are required to give meaning to all of the provisions. The Carrier's responsibility was only to fill active positions. Therefore, only four (4) that were active on July 31, 2004 are at issue here. The Organization has failed to demonstrate lack of good faith on the part of the Carrier. The Carrier's decision not to fill the four positions which were not active on July 31, 2004 was a good faith decision. With respect to the remaining four positions, the Organization has again failed to demonstrate that the Carrier did not make a good faith effort to fill them. In fact the Carrier added six (6) employees to the machinists' roster at North

Little Rock during the relevant time period. Just because the Carrier determines to fill positions with apprentices does not show that they did not make a good faith effort. The apprentice agreement states in pertinent that, "this is a method of developing employees to become skilled and competent mechanics." Apprentice programs are important to both the Carrier and the Organization. If hiring additional apprentices were irrelevant to the Carrier's obligation under the August 20, 2004 Agreement, why would the Carrier take on this additional expense. In addition to the above, the claim does not seek appropriate relief. The Carrier would note that the general Chairman's request for relief prior to any possible agreement demonstrates that the relief was not appropriate. There is nothing in the record to support the requested relief even if the Organization had met its burden, which it most clearly has not. Therefore, based on the above the Claim must be denied.

Upon complete review of the record in its case, the Board finds that, of the eight positions in the Organization's claim, four of them were not active on July 31, 2004, one of the remaining four positions was filled a machinist. According to the Carrier's argument regarding the remaining positions, the Carrier hired five apprentices at this property. It seems to the Board that the intent of the Agreement between the Parties was that openings would be filled by journeymen machinists who were fully qualified. The apprentices hired for the three openings as defined in the Agreement are not fully qualified machinists' positions. They are merely trainees. They may work alongside the craft but they are not full fledged member of the class. An apprentice does not fill a machinist's position. An apprentice fills a trainee slot and who presumably, if successful, will become a machinist sometime in the future. There was no showing in the record that the Carrier made any reasonable attempt to find journeyman machinists to fill these three slots. Therefore the Board will find that to this extent the Carrier has violated the August 24, 2004 Agreement.

We come then to remedy in this matter. The Carrier did violate the agreement in that it did not make a sufficient effort to fill three (3) machinists' slots. The appropriate remedy given the unusual nature of this case is to award to all the claimants an equal split of five (5) months (nine (9) months less the four (4) month grace period) straight time pay of the journeyman machinists class times three (3) and less the straight time pay of the apprentice times (3). As noted above the net of this straight time pay will be split equally among the Claimants.

Claim partially sustained.

AWARD

Claim sustained in accordance with the Findings.

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 Second Division

Dated at Chicago, Illinois, this 26th day of June 2007.