

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES.—(a) Is Machinist A. H. Schmauch, first shift, Ashland, Ky., when assigned under Rule 34 to fill temporarily the place of Night Roundhouse Foreman J. H. Shanklin, on 12-hour assignment, and paid his own hourly rate, entitled to the transfer provision—rate and one-half—of Rule 13, for the first 8 hours filling the foreman's place, and to 4 hours at double time under the last paragraph of Rule 7 for the remaining four hours of the foreman's regular tour?

(b) Is Machinist Schmauch entitled to rate and one-half under the provisions of Rule 13 when returning to his own shift after having filled the place of Night Roundhouse Foreman Shanklin under Rule 34?

JOINT STATEMENT OF FACTS.—Machinist A. H. Schmauch's regular assignment was first shift, 7:00 A. M. to 3:15 P. M.

Night Roundhouse Foreman Shanklin's regular assignment was from 6:00 P. M. to 6:00 A. M.

On March 20, 1932, Mr. Schmauch worked his regular shift as machinist, and was relieved at 3:15 P. M. Roundhouse Foreman Shanklin reported sick, and Machinist Schmauch was notified about 4:30 P. M. to fill his place, reported at 6:00 P. M., the regular starting time of the foreman, and filled the foremanship night of March 20. He continued in the foreman's place nights of March 21, 22, 23, and 24, completing the assignment at 6:00 A. M., March 25. He was notified before 6:00 A. M. that Foreman Shanklin would work his job night of March 25, and returned to his (Schmauch's) regular assignment, 7:00 A. M., March 25, 1932, of his own choice.

POSITION OF EMPLOYEES.—When an employe is used to fill the place of a foreman and is paid his own rate he should be compensated on the same basis as if he was performing work with his tools, overtime rate for changing shifts as provided for in Rule 13 and double time after 16-hours service as provided for under the provisions of Rule 7, which was the established practice on the Chesapeake and Ohio Railway up to March 6, 1929, when the chief mechanical officer issued instructions without conferring with and unbeknown to the committee, changing established practice in violation of rules of the Agreement, which is supported by exhibits. Therefore, employes who have been improperly paid should be compensated for the amount which is due them, and pay under the rules in future cases.

POSITION OF CARRIER.—Carrier's position taken in respect to Rule 34, in its letter of January 9, 1922:

“Under this rule it is not incumbent upon the Company to work mechanics temporarily filling the foreman's position the same number of hours worked by the foreman.”

was unsatisfactory to the employes, and came up for discussion in conference of February 9 to 22, 1922, when the general chairmen and the company's representatives had convened to reach an understanding of the rules issued by the Labor Board. The conferees were unable to harmonize their respective views as to the application of Rule 34 to govern when a mechanic filling a foreman's place takes his own hourly rate, and agreed to submit it to the Labor Board for decision.

On February 23, 1922, the day after close of the conference, superintendent of motive power wrote the president of the Shop Federation, suggesting that submission to the Board be deferred for 30 days, and conceding for that period the wish of the employes that those acting temporarily in a foreman's place

might work the same hours as the foreman worked; and on February 24, 1922, the president of the Shop Federation advised by letter of their acceptance, which arrangement prevailed, and was confirmed, and the intent of the superintendent motive power's letter of February 23, incorporated in Understanding of Rule 34, worked out with the men's representatives in conference beginning June 14, 1923, and Rule 34 was not submitted to the Labor Board for interpretation.

It will be noted that in the letter of February 23, 1922, the superintendent motive power suggested that the basic day of the one filling a foreman's place should start at the hour of the foreman's starting time, which suggestion was accepted by the employes' representatives and incorporated in the Understanding of Rule 34.

During the conference held beginning June 14, 1923, the matter of how one should be paid serving temporarily in a foreman's place when choosing his own hourly rate in place of the foreman's rate was considered, and the following, quoted from current Understanding of Rule 34:

"* * * and it is understood that the employes' basic day will start at the hour of the foreman's starting time, and it is further understood that any time worked after the close of the first eight hours, plus the meal period, if any, after the foremen's starting time, will be paid for under the overtime rule."

was jointly agreed to and included in the Understandings to govern such payment, and to free us from the influence of decisions rendered on Rule 34 by Railway Board of Adjustment No. 2, and by the United States Railroad Labor Board, such as, Docket 1790, Railway Board of Adjustment No. 2, Michigan Central Railroad and Federated Shop Crafts; Docket 1848, Railway Board of Adjustment No. 2, Cleveland, Cincinnati, Chicago & St. Louis Railroad and Employes; Decision No. 996, Docket 1594, U. S. Railroad Labor Board, Railway Employes' Department, A. F. of L. (Federated Shop Crafts) vs. Washington Terminal Company.

Note.—The language of National Agreement Rule 34, of Labor Board Rule 34, and of C. & O. Rule 34, is verbatim and on which rule the three above referred to decisions were rendered.

It was mainly to clarify the first sentence of Rule 13, a rule to govern when transferring an employe of a class to the place of another employe of the same class, that an understanding of it was written. No question arose about the second sentence as its meaning appears plain.

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.

The parties to said dispute were given due notice of hearing thereon.

Rule 34 provides how a mechanic may be paid when filling a temporary vacancy of foreman. If paid his own rate he will receive straight time for straight hours and overtime rate for overtime hours.

The understanding of Rule 34 provides that he will work the same number of hours as the foreman and have the same starting time as the foreman for his basic day but does not exempt the other provisions of Rule 34.

In the written understanding of Rule 34 there is nothing that eliminates the provisions of Rule 13.

AWARD

- (a) Yes.
- (b) Yes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 4th day of June, 1936.