Award No. 188
Docket No. 171
2-NYC-MA-'37

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the assigning of the so-called working foreman is a violation of Rule 32 of the New York Central rules and working agreement.

JOINT STATEMENT OF FACTS: On July 22, 1936, J. E. Boland was hired and assigned as a mechanic for the maintenance of gas motor cars at Yorktown Heights, New York. On August 16, 1936, he was assigned to a monthly rate of pay and is performing all necessary work.

POSITION OF EMPLOYES: That the assigning of an employe on a monthly rate of pay, with the so-called title of working foreman, and who is doing mechanic's work at Yorktown Heights, New York, is a violation of Rule 32 of the New York Central shop crafts' rules and working agreement.

POSITION OF CARRIER: Rule 32 of the shop crafts' agreement reads as follows:

"Rule 32. Assignment of Work.

"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.

At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

Yorktown Heights is an outlying point at which no mechanics are now employed. The position of working foreman was established August 16, 1936. The mechanic who had been working at that point from July 22 to August 16, 1936, was assigned to the position of working foreman. No mechanic was displaced or laid off as a result of this change.

The only question in this case is the interpretation of Rule 32. The first sentence of this rule reads:

> "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."

By express exception, foremen may do mechanic's work, at points where no mechanics are employed. No mechanics other than the foreman himself are employed at Yorktown Heights. Interpretations placed on Rule 32 by Assistant Director McManamy, while not in any way binding upon this Board, nevertheless serve to throw some light on the history of the rule and its application by another and independent agency. The interpretation placed upon the rule by Mr. McManamy is the only one the language of the rule permits, and that is that at points where there are no mechanics employed, a foreman can do mechanic's work.

The argument of the employes that if any employe was to be made working foreman, that one of the mechanics who did work at High Bridge should be given the job is not tenable. It is true that certain work was transferred from High Bridge to Yorktown Heights, but granting that, we are of the opinion that there was no regularly assigned mechanic at High Bridge, so as to bring this case within the last paragraph of Rule 32. Moreover, the point here concerned is not High Bridge, but Yorktown Heights. The employes who did work occasionally at High Bridge were from a point called Harmon. We cannot agree that their occasional employment entitled one of them to the position at Yorktown Heights. However, assuming that they were so entitled, it appears that they had every opportunity to accept assignment, but did not take advantage of this opportunity, because they were not assured that their seniority rights at Harmon would be protected. Mr. Boland, who was assigned to the job, assumed it without insisting on protection of his seniority rights at the point from whence he was assigned.

There has been some argument by the employes to the effect that the exception in Rule 32, which allows a foreman to do mechanics' work at a point where no mechanics are employed, was a concession by the employes to avoid hardship to the management at certain points. The rule, however, as stated, is general and we have no way of determining what was in the minds of the negotiators when the rule was written. We must accept and apply the rule as we find it. It may well be that the fears of the employes that the carrier will apply this rule to the employes' detriment is fully justified. If so, that can only be corrected by negotiations, clarifying the intent of the parties and changing the wording of the rule as to result in fair dealing.

We conclude that the carrier was within the exception in Rule 32 in assigning Boland as working foreman at Yorktown Heights, where no mechanics were employed. There has been no rule cited to show that it was improper for the management to assign Boland first as a mechanic and later as a working foreman.

The claim of the employes must be denied.

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.

The carrier did not violate the agreement with System Federation No. 103 in assigning Boland as a working foreman at Yorktown Heights.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.