

Award No. 566

Docket No. 586

2-B&M-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That Adrian Forcier, machinist, should be compensated at punitive rate for work performed by Donald McCullough, machinist helper, February 11, 1940.

That the assignment of Donald McCullough to machinists' work was in violation of Rules 26 and 47.

JOINT STATEMENT OF FACTS: An agreement exists between the parties to this dispute, which agreement became effective April 1, 1937. Rules 3, 4, 26 and 51 of that agreement read:—

"Overtime Sunday and Holiday Work

Rule 3. Work performed on Sunday and the legal holidays, namely; New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by State, Nation or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half, except that employees and those who may be called to work in their places, necessary to the operation of power houses, millwright gangs, heat treating plants, train yards, running repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays, will be compensated on the same basis as on week days. Sunday and holiday work will be required only when absolutely essential to the continuous operation of the Railroad."

"Emergency Service

Rule 4. (a) For continuous service after regular bulletin hours, employees will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed.

(b) Employees shall not be required to work more than two (2) hours overtime without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

(c) Employees called or required to report for work and reporting but not used, will be paid a minimum of four (4) hours at straight time rates.

(d) Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and

Therefore, he was available to work on Sunday, February 11, 1940, and inasmuch as a machinist helper was used, the management offered to settle the claim by paying Forcier eight hours at pro rata, what he would have been paid if he had been used on February 11, instead of Helper McCullough. This offer was declined by the committee.

The organization may make a point of the fact that McCullough did not do the work of the absent man, Whitcomb, on Sunday, February 11. It is a fact that the locomotive inspector's work was done by another enginehouse machinist, not by Helper McCullough; that, however, is irrelevant to the question before the Board. McCullough took the place of an enginehouse machinist who was assigned by bulletin to work Sundays.

The organization may refer to repairs to Locomotive 4102. This engine broke down at Royalston, was taken into East Deerfield, February 10, and Machinist Newton, a regular enginehouse machinist, was given the job of making repairs. He worked sixteen hours on the job and McCullough did some work on it February 11 and then went along with other enginehouse work.

Rule 51 states dead work means all work on an engine which cannot be handled in twenty-four hours by regular assigned running repair force. 4102 was handled by regular running repair forces less than twenty-four hours.

The rule also makes clear that where running repair and dead work forces are maintained, such employees may be used on either class of work to meet service requirements.

There was no violation of Rule 51 in this case.

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.

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

There is no agreement in effect providing for "setting up" of helpers, i. e., promoting or advancing helpers to positions of mechanics either temporarily or permanently.

If such an agreement is made it must be made by the same representative authorities that negotiated the Schedule of Rules.

Mechanics may, of course, be employed as such under the provisions of the agreement but when so employed seniority as mechanics starts as per the provisions of the agreement.

AWARD

The second paragraph of the claim is sustained.

The claim for compensation for Adrian Forcier, because Donald McCullough was used, is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1941.