

Award No. 635

Docket No. 554

2-B&M-MA-'41

**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. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: Laborers should not be used as spare machinist helpers, to fill the place of, for a period of less than five days duration.

Second, when a machinist helper is off for a period of less than five days duration, job should be filled by regular assigned machinist helper, if filled at all.

Third, laborers cannot be used as machinist helpers for periods of five days or more if there are furloughed machinist helpers at the point or at other points with application on file under Rule 23.

Fourth, Kenneth Webber, machinist helper, should be compensated for eight hours at punitive rate because Laborer Doane was used as a machinist helper January 3, 1940.

Fifth, Frank Maltais, machinist helper, should be compensated for eight hours at punitive rate because Laborer Doane was used as a machinist helper February 13, 1940.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between System Federation No. 18, Railway Employees' Department, A. F. of L. and the Boston and Maine Railroad. The effective date of agreement was April 1, 1937. The following rules are included in the present agreement:—

Rule 25—Seniority—Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments:—

Maintenance of Equipment,
Maintenance of Way,
Maintenance of Telegraph and Telephone,
Electrical Workers in Signal Department,
Stores Department,
Five sub-divisions of Carmen, as follows:
 Pattern Makers,
 Upholsterers,
 Painters,
 Other Carmen,
 Coach Cleaners.

We have no dispute with the committee that under Rule 25 the work of a craft or class at the point belongs to those holding seniority rights at the point, neither have we any dispute that when there are no furloughed men of a craft or class at the point and there are other furloughed men of the craft or class on the system who have made application for work elsewhere that they should be used in preference to other classes of employees such as Laborers.

The second item in the claim is:

"When a Machinist Helper is off for a period of less than five days duration, job should be filled by a regular assigned Machinist Helper, if filled at all."

There is no support for this part of the claim in any of the rules of the agreement. Rule 4 (a) of the agreement reads:

"For continuous service after regular bulletined 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."

Neither this rule nor any other rule makes it obligatory to double over a regular man who has worked as Webber and Maltais did from 3:00 P. M. to 11:00 P. M. on the following shift from 11:00 P. M. to 7:00 A. M., but Rule 4 does provide that if they are required to work overtime, how they shall be paid for such overtime.

The third item in the claim is:—

"Laborers cannot be used as Machinist Helpers for periods of five days or more if there are furloughed Machinist Helpers at the point or at other points with applications on file under Rule No. 23."

We agree with this principle but it has no bearing on the instant case as claim from Webber and Maltais is because they were not doubled over on one day instead of using Laborer Doane; in other words, laborers were not used for five days or more in place of machinist helpers, but only one day in each case. Some jobs at large roundhouses can be blanked for one or two days, that is—not filled, while other jobs must be represented by someone every day.

These jobs of Mullin and Mednicov on the 11:00 P. M. shift had to be filled. The notice that the men were to be off was short and the long standing practice of using a laborer instead of doubling over a helper who was getting through at 11:00 P. M. was followed.

Rule 44, quoted in joint statement of facts, second paragraph, reads:—

"Laborers, when used as Helpers, will be paid the Helpers' rate."

The rule plainly anticipates that there will be cases when laborers must be used as helpers and, therefore, provides how they shall be paid.

There is no rule in the Shop and Round House Laborers' Agreement which requires that they be promoted to position of helper but we have promoted these laborers to helpers and we have used them as such many times temporarily, and, in fact at this very point, have had requests from the committee to use laborers as helpers and to promote laborers to helpers instead of hiring new men. Likewise in the car department, the committee has asked us to give coach cleaners a chance to work as helpers rather than hire new men.

If these laborers are not to be allowed to do spare work as helpers, then we might just as well hire outsiders as helpers and let the laborers remain as laborers.

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.

Incorporation of Rule 44 in the same agreement as Rule 12, indicates the contracting parties contemplated that on occasions laborers could perform helper's work. This does not mean seniority established by Rule 25 is a nullity. Here there is evidence that the carrier has used laborers as a spare board for helper's work. In view of this, the Division finds that the agreement does not justify the carrier's position.

AWARD

Claim for compensation sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.