

Award No. 860

Docket No. 818

2-N&W-SM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That on May 26, 1942, at Williamson, W. Va., the carrier did and persists in violating the controlling agreement and Rules 63 and 30 thereof by:

(a) The assignment of Machinist Helper Henry Hammond to helping Pipefitter Gerard from 11:00 P. M. to 7:00 A. M., eight hours.

(b) The failure to assign Pipefitter Helper W. K. Kennedy to helping Pipefitter Gerard from 11:00 P. M. to 7:00 A. M., eight hours.

2. That in consideration of the aforesaid violations, Pipefitter Helper W. K. Kennedy shall be paid from 11:00 P. M. to 7:00 A. M., May 26, 1942, eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At Williamson, West Virginia, the carrier maintains three shifts of pipefitters and pipefitter helpers and three shifts of machinists and machinist helpers.

The claimant is employed regularly on the first shift, or from 7 A. M. to 3 P. M.

Machinist Helper Henry Hammond is regularly employed on the third shift, or from 11 P. M. to 7 A. M.

On May 26, 1942, a vacancy occurred for a pipefitter helper on the third shift, starting time 11 P. M., and Machinist Helper Hammond was assigned thereto, helping Pipefitter Gerard, the entire eight hour shift.

The claimant on the first shift was available and willing to fill the third shift vacancy helping Pipefitter Gerard.

At Williamson, separate seniority rosters are maintained—one for pipefitter helpers and one for machinists helpers.

POSITION OF EMPLOYEES: Sheet Metal Workers, Special Rules, Rule 63, provides:

"Helpers' work shall consist of helping sheet metal workers and apprentices, and operating pipe threading and pipe cutting machines."

Rule 63 appeared in the National Agreement as Rule 128. There was no interpretation of Rule 128 by Mr. McManamy as was the case of Rule 64. But it is pertinent to point out that in interpreting Rule 64 there was good reason why that interpretation was equally applicable to helpers in all crafts. A helper whether it be to a pipefitter or to a machinist is merely one who helps. In other words, he is an assistant. See Award 412 (Third Division). He is not a skilled employee. Award 1218 (Third Division). Among unskilled workers there is good practical sense in keeping them fully employed.

Rules 30 and 63 of the current agreement were substantially the same as Rules 31 and 128 in the National Agreement. If those rules, upon which the employees rely, had the meaning which is now ascribed to them with regard to helpers, Mr. McManamy could not have said that "there is no restriction placed on the work of machinist helpers." He would have had to say that the monopoly now allegedly created by those rules restricted the work of machinist helpers to the machinist craft. It is submitted that these rules must be construed in the light of the whole agreement (Award 1811, First Division). So considered, the interpretation of Rule 64 negatives the contention that Rules 30 and 63 provide a monopoly for sheet metal worker helpers in such a case as is here presented to the Division.

* * * * *

And finally claim is made for Mr. Kennedy at time and one-half for the period that Hammond worked on May 26. There has been no showing by the committee during the handling of the grievance on the property that Kennedy was entitled to be doubled over and worked overtime on that day. There were six helpers in the craft at Williamson (two being occupied on the third shift)—why should Kennedy have been used in preference to the other three? Under what rule had he the right to be called? The carrier knows of none. For this reason, if for no other, claim for compensation should be denied. See Award 567 (Second Division).

The Carrier requests that the Board deny the claim on all scores.

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.

The special rules of the various classes outline helpers' classification of work and Rule 63 of the current agreement provides that sheet metal worker helpers' work shall consist of helping sheet metal workers and apprentices, and operating pipe threading and pipe cutting machines.

However, in consideration of the particular circumstances surrounding this case the claim for compensation is dismissed.

AWARD

Claim sustained in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1942.