

Award No. 968

Docket No. 867

2-ACL-MA-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier violated the requirement imposed in Rule 3 (d) at Montgomery, Alabama, by—

- (a) Arbitrarily assigning Machinist J. E. Nichols to relieve the second shift assignment of Machinist E. W. Sceals, August 31, 1942.
- (b) Arbitrarily assigning Machinist L. C. Smith to relieve the second shift assignment of Machinist E. W. Sceals, September 3, 1942.

2. That the carrier be ordered to adjust the said violations by—

- (a) Compensating Machinist H. T. Stephenson for one and one-half hours overtime relief service performed by Machinist Nichols on August 31, 1942, in the amount of \$2.18.
- (b) Compensating Machinist H. T. Stephenson for eight hours relief service performed by Machinist Smith on September 3, 1942 in the amount of \$11.64.

EMPLOYEES' STATEMENT OF FACTS: Three shifts of machinists are regularly employed in the carrier's enginehouse at Montgomery, Alabama. Twenty-four-hour service is thus provided and to include Sundays and holidays. Assignments now existing on the second and third shifts include Sunday and holiday work. The rate of pay established for machinists amounts to 97¢ per hour.

Machinists Smith and Stephenson were regularly assigned to the first shift, 7:00 A. M. to 3:30 P. M., six days per week, as on the dates on which the instant dispute arose. Machinist Nichols was employed and placed on the first shift effective August 31, 1942. He was on that date doubled to the second shift for the purpose of relieving the regular eight-hour second shift assignment of Machinist E. W. Sceals, 3:30 P. M. to 12:00 Midnight. Machinist Sceals was absent from duty on August 31, 1942, because of injuries sustained when he fell from the running board of a locomotive on August 30, 1942.

Carrier contends there is no reason in this argument, that Machinist Stephenson has been paid all he is entitled to under the agreement, and asks the Board to summarily dismiss this part of the claim.

Further pending the expiration of the five-day limit for the bulletin, and due to the fact that no machinist could readily be found to fill the vacancy, machinists from other shifts were worked alternately and paid overtime rates, sequence as follows:

September 1—L. U. Frye
September 2—F. F. Johnson
September 3—L. C. Smith
September 4—H. E. Frederick

Enginehouse Foreman Page consulted Local Chairman H. T. Stephenson as to the filling of these assignments, in accordance with paragraph D, Rule 3 of the agreement, and Local Chairman Stephenson assented to the use of the four above named machinists to fill the shifts.

Later after arrangements had been completed for the sequence of the machinists to work, Local Chairman Stephenson evidently recanted, and wanted a larger portion of the overtime, so demanded that Machinist L. C. Smith be taken off the line-up and that he (Stephenson) be allowed to work on September 3. The enginehouse foreman, of course, would not agree to this; the men had already been lined up to work as shown. Machinist Stephenson had already gotten six and one-half hours of the overtime work, yet selfishly wanted another man thrown out so that he could get eight hours more of this penalty time. Inasmuch as the requirements of Rule 3 paragraph (d) had already been fully complied with, there was no good reason why the arrangements already made should be abrogated to the advantage of Local Chairman Stephenson and the disadvantage of Machinist L. C. Smith. It would have been altogether unfair to the latter.

Affidavit from Enginehouse Foreman J. E. Page, marked carrier's Exhibit A, fully explains the circumstances of both claims. Mr. Page tells of the agreement he had with Local Chairman Stephenson as to filling the assignments, and the manner in which Stephenson wanted a change made for his own benefit.

The carrier had clearly shown that paragraphs B and E of Rule 12 were properly complied with by assigning youngest machinist on this job on August 31, this man working one and one-half hours, and Machinist Stephenson working the remaining six and one-half hours. Further on September 3, the man that was originally agreed upon by H. T. Stephenson and Foreman Page worked this shift, and Machinist Stephenson therefore has no claim for the time worked by Machinist L. C. Smith.

The carrier contends both of these claims are unjust and altogether uncalled for, and do not help to make harmonious relations between the local chairman of the machinists at Montgomery, either with his own fellow employees or with the management. The claims show greed and selfishness and little regard for others.

Carrier respectfully requests the National Railroad Adjustment Board to deny this claim.

Carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case which it has not seen, to make such further answer and defense as it may deem necessary and proper in relations to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all 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 3 (d) of the prevailing agreement provides that "the use of relief men when needed due to service requirements will be arranged by the Foreman and the Local Chairman of the craft to which the employe belongs."

The evidence of record supports the conclusion that the requirement of this rule was disregarded.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.