

Award No. 1132

Docket No. 1035

2-IC-MA-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ILLINOIS CENTRAL SYSTEM

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the Memorandum of Agreement of February 18, 1944, when Machinist William Todd was refused his service rights to work on Sunday, March 19, 1944, in the absence of Machinist Roy Garland.

2. That the carrier be ordered to pay Machinist Todd for Sunday, March 19, 1944, eight (8) hours at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: At Centralia, Illinois, the carrier maintains a shop point and a force of machinists.

The regularly assigned hours of Machinist Roy Garland were from 7 A. M. to 12 Noon, and from 12:30 P. M. to 3:30 P. M., seven days a week. Machinist Garland was absent on Sunday, March 19, 1944.

The regularly assigned hours of Machinist Todd, the claimant, were from 7 A. M. to 12 Noon, and from 12:30 P. M. to 3:30 P. M., six days a week, exclusive of Sundays and holidays.

The claimant, through his local committee, insisted on Saturday, March 18, that he be allowed to work in the place of Machinist Garland on Sunday, March 19. The management declined the request of the committee, which is confirmed by Exhibit A, herewith submitted.

The controlling memorandum of agreement is dated February 18, 1944, copy of which is submitted and identified as Exhibit B.

POSITION OF EMPLOYEES: Prior to this dispute, it had been the practice to fill vacancies of men regularly assigned to work on Sundays and holidays, and as of this date, March 19, 1944, there had been no reduction in the number of men regularly assigned to work on Sundays and holidays.

It is submitted, therefore, that this claimant is a "qualified" employe, within the meaning of the second paragraph of Exhibit B; that he had on previous occasions worked in the place of Machinist Garland, and that it was his right to work in the place of Machinist Garland on Sunday, March 19, 1944, under the provisions of Rule 13, captioned "Distribution of Overtime."

It is further submitted that the first paragraph of Exhibit B, in part reading—

Notwithstanding such requests, this exhibit has not been furnished to carrier and if such exhibit is submitted to the Board its use is in violation of instructions contained in Circular No. 1 issued by the National Railroad Adjustment Board. The carrier reserves the right to submit any additional comment or evidence it deems necessary.

Carrier maintains it has produced herein evidence which conclusively establishes:

1. The past practice has been to fill temporary vacancies on seven-day positions only at discretion of management, and that no other consideration has entered into the filling of these temporary vacancies,
2. There has been no violation of any rule in the agreement, and
3. The propriety of blanking positions under the circumstances set forth herein and deferring of such work to meet exigencies of the service is not a violation of the agreement.

The interpretation and application being established, the employes cannot found a charge of violation thereon and it, therefore, becomes apparent carrier's action has been proper and claim should be denied without qualification.

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.

An employe regularly assigned to a position seven days per week absented himself from work on a Sunday for personal reasons. The question is whether the carrier was obliged to fill the vacancy on that day. If so, it is not questioned by the parties that the claimant was entitled to the work.

It is not a requirement of the rules that such a position must be worked seven days a week, even though the employe regularly assigned to it may be entitled to seven days' work.

There is no practice to the contrary. The mere fact that such temporary vacancies have often been filled is of no importance. The significant consideration is that there are many instances where this has not been done and no complaint has been made.

There was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1946.