

Award No. 1405

Docket No. 1297

2 T&P-MA-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That at Baird, Texas, the shift, with lunch period of one hour which ends at 5:00 P.M., and the shift beginning at 8:00 P.M., that was established effective June 7, 1949, are not authorized by our current agreement.

2. That this violation be corrected, and that—

(a) Machinist J. G. Guilott and Machinist Helper R. F. Arvin are each entitled to be paid for the properly maintained first shift at the point from 7:00 A.M. to 3:00 P.M., eight regular hours, and from 3:00 P.M. to 5:00 P.M., two extra hours, at their applicable straight time and overtime rates, less the hours paid for within the same spread of hours, retroactive to June 7, 1949.

(b) Machinist W. H. Long and Machinist Helper E. W. Havens are each entitled to be paid for the properly maintained second shift at the point from 3:00 P.M. to 11:00 P.M., eight regular hours, and from 11:00 P.M. to 4:00 A.M., five extra hours, at their applicable straight time and overtime rates, less the hours paid for within the same spread of hours, or from 8:00 P.M. to 11:00 P.M., three extra hours, and for the properly maintained third shift from 11:00 P.M. to 7:00 A.M., eight regular hours, at their applicable overtime and straight time rates of pay, less the hours paid for within the same spread of hours, retroactive to June 7, 1949.

(c) The 8:00 P.M. to 4:00 A.M. shift be abolished.

EMPLOYES' STATEMENT OF FACTS: Prior to June 7, 1949, the running repair forces at Baird, Texas, which were comprised of machinists, machinists helpers, carmen and carmen helpers, were assigned three consecutive 8 hour shifts, each shift beginning at 7:00 A.M., 3:00 P.M. and 11:00 P.M., with twenty minutes for lunch.

On June 7, 1949, the carrier abolished assignments in locomotive department and made effective that date a two shift assignment for the machinists and their helpers. They were assigned to work from 8:00 A.M. to 5:00 P.M., (one hour for lunch) and from 8:00 P.M. to 4:00 A.M., (twenty minutes for

shifts, not exceeding three, in each department, so as to meet the necessities of the service." (Emphasis added).

AWARD

Claim denied."

Car inspectors and helpers are in a different department from machinists and helpers of this carrier, and their seniority is separate; neither classification, work, nor seniority is interchangeable with the other. Award No. 623 denies the claim of these employees and supports the contention of the carrier.

The carrier has proved the following:

1. There was a reduction in business at Baird, making it necessary to reduce machinists' force.
2. That the carrier complied with all rules of the agreement in this reduction.
3. That in the absence of rules clearly establishing the right, the carrier should not be directed to pay for time of hours not worked.
4. That hours of service now being worked by machinists at Baird are in line with rules of the current agreement with System Federation No. 121.

The carrier submits that the claim herein is without merit and should be denied.

Submitted as carrier's exhibits are the following:

- "A" Copy of the general chairman's letter of August 23, 1949, addressed to Mechanical Superintendent Kascal.
- "B" Copy of the Mech. Supt. Kascal's letter of August 26, 1949, to Mr. Hammond.
- "C" Copy of the general chairman's letter to the carrier's director of personnel dated September 19, 1949.
- "D" Copy of the director of personnel's letter to Mr. Hammond, dated October 10, 1949, rendering a decision in the 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 employe or employees 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.

Prior to June 1, 1949, at Baird, Texas, the particular point involved which was strictly a running repair point where the service required only the employment of running repair and inspection forces, three shifts of running repair forces worked round the clock as provided in Rule 1 (d). Each shift was composed of machinists, machinist helpers, carmen and carmen helpers. On June 7, 1949, because of business reduction one machinist and machinist helper were eliminated, and carrier established two new and separate shifts for machinists and machinist helpers, assigned to commence

and quit work at times different from the rest of the three-shift running repair forces of which they were a part. At that point there were no shop or back shop forces as such employed. The question presented is whether or not such action was authorized by Rule 1 of the agreement and the exception appended thereto in the absence of an agreement as provided in Rule 1 (e).

Claimants contended that since three shifts of running repair forces were employed as provided in Rule 1 (d) and machinists and machinist helpers were a part thereof, and not shop or back shop forces, then that part of Rule 1 (e) which provided,

"The time established for commencing and quitting work for all men on each shift shall be the same at the respective points unless otherwise agreed"

was controlling. We sustain that contention.

However, the rules do not require that machinists and machinist helpers shall be employed on each shift, but at Baird the running repair forces of which they were a part are limited to three shifts, and claimants under the circumstances were entitled under Rules 1 (d) and (e) to commence and quit work at the same time as all other men on each shift to which they might be respectively assigned. In other words, under the circumstances presented here there is no provision in Rule 1, or the exception thereto, or in any other rule of the agreement, which authorized the carrier except by agreement as provided in Rule 1 (e) to establish the two extra, or lap shifts, here involved.

To hold otherwise would permit innumerable shifts of the same forces at the same point for each craft and give this agreement no force and effect. See Awards 1242, 917, 653. See also Interpretation Rule 5, National Agreement. Therefore, the violation is ordered corrected in accord with the findings.

We find no applicable rule in the agreement permitting recovery for the compensation claimed and it is denied.

AWARD

Claim to correct violation at point involved sustained as per findings.

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy T. Fountaine
Acting Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1950.