

Award No. 1515

Docket No. 1406

2-FEC-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That Machinist Helper W. R. Davis was improperly compensated at New Smyrna Beach Enginehouse between 1925 and September, 1949, inclusive.

2. That W. R. Davis be additionally compensated the difference between that of Machinist Helper and Machinist, account performing mechanics' (Machinist) duties in the amount of sixteen thousand six hundred ninety one dollars and seventy-five cents (\$16,691.75) during the above period.

EMPLOYES' STATEMENT OF FACTS: Machinist Helper W. R. Davis, hereinafter referred to as the claimant, between the period 1925 and September, 1949, inclusive, performed mechanics' work outlined in the letter of July 13, 1950, directed to General Chairman Haley by the claimant submitted herewith and identified as Exhibit A. In the performance of such work the claimant was given helpers to assist him during the period in question.

The case was handled from bottom to top with carrier officials designated to handle such affairs, who all declined to adjust the dispute.

The agreement effective November 19, 1935, as subsequently amended, and those in effect prior to this agreement, are controlling.

POSITION OF EMPLOYES: It is respectfully submitted that it was not proper to use a helper on mechanics' work under any of the classification of work rules of the controlling agreements during the period involved in the claim, as Rule 25 of the agreement effective November 19, 1935 reads in part as follows:

"None but Mechanics or Apprentices regularly employed as such shall do Mechanics work, as per Special Rule of each Craft,"

and the agreements effective prior to the November 19, 1935 agreement read in pertinent part as above.

dropping draw bar pins and examining draw bars between engine and tender, dismantling and rebuilding of draft gear assemblies, applying draw head to engine and tender, removing pilots and applying pilots, changing of engine spring rigging and hangers.

Rebuilding of the items named requires blacksmith work, which he has not done; machine work, which he has not done; plain drilling, which is done by a machinist helper (drill press operator). Applying all couplings between engine and tender (draw bars and draw bar pins) is listed under machinist helpers' work in the different agreements. Although dropping draw bars and draw bar pins is not listed in the classification of helpers' work, it follows that this is also machinist helpers' work. Examining draw bars and draw bar pins is machinists' work and is required by Rule 122 of the I.C.C. Bureau of Locomotive Inspection Laws, Rules and Instructions for inspecting and testing of steam locomotives and tenders, and report must be made under Item 6 of Form No. 1—Monthly Locomotive Inspection and Repair Report and Item 29 of Form No. 3, Annual Locomotive Inspection and Repair Report, and these forms must be subscribed and sworn to before a notary public by the locomotive inspectors and the inspectors subscribing and swearing to the condition of the equipment must know the condition which can only be determined by actual inspection by the signer of the report. Otherwise, he would be swearing to a condition of which he knows nothing and would be subject to the penalty prescribed by Section 125 of Revised Statutes of the United States (as amended by Act of March 4, 1909; 35 Stat., 1088.)

Applying and removing tender, trailer and engine trucks at enginehouses is listed as machinist helpers' work in Rule 104 of the agreement of November 19, 1935.

W. R. Davis is claiming the equivalent of promotion to machinist at the time he was promoted from laborer to machinist helper which would be a violation of Rules 26 and 27 of the agreements of July 15, 1922 and October 16, 1933, and Rules 101 and 102 of the agreement of November 19, 1935.

Rule 6 of the agreements of July 15, 1922 and October 16, 1933 and Rule 19 of the agreement of November 19, 1935 provide for payment of higher rates when work carrying a higher rate than the regular rate of an employe is done and claim for that work must be made at the time it is done so that he can be paid for the time so used. No claim was made for doing machinist work under this rule.

No grievance was ever made in connection with a claim that W. R. Davis was doing machinists' work. The work has been done in the open and subject to the policing of the agreement by shop committees, and general chairmen of machinists, and no complaint has been made by them.

There was no case in connection with this claim, pending or unadjusted on June 21, 1934 and that part of the claim from January 1, 1925 to June 21, 1934 should be eliminated before consideration is given to the claim.

The carrier contends that W. R. Davis has been justly compensated for the work that he has done and that the rules of the agreements, under which he worked, have not been violated.

Therefore, the carrier respectfully requests the National Railroad Adjustment Board, Division Two, to deny this claim.

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.

The major portion of this claim is barred by reason of the involved employee's failure to comply with express requirements of Rule 27 of the current agreement and the remainder cannot be sustained because the facts of record fail to establish that in fulfilling the duties of his regularly assigned position of machinist helper he performed the work of a machinist.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.