

Award No. 1538

Docket No. 1469

2-TC-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, it was improper to assign other than a Machinist to dismantle and replace a windshield wiper motor, and assembly on Diesel Unit No. 76 on July 8, 1950.

2. That accordingly the carrier be ordered to compensate Machinist Leon Parker for said work in the amount of four (4) hours pay at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: Machinist Leon Parker, hereinafter referred to as the claimant, was employed on the 7:00 A. M. to 3:00 P. M. shift, Saturday through Wednesday, with Thursday and Friday as rest days. At 3:00 P. M. the afternoon of July 8, 1950, diesel unit No. 76 was placed in the roundhouse for inspection and repair if needed. The officer in charge assigned a pipefitter, working on the second shift, to the unit who found that the windshield wiper was inoperative. He changed the hose (which is recognized pipefitter work) on the wiper motor but that attempt to correct the trouble did not eliminate it. He then removed the windshield wiper motor and replaced it with another motor taken from the air room which change did eliminate the trouble. Removing and replacing the windshield wiper motor necessitated dismantling and reassembling the entire windshield wiper assembly. The carrier in their letter of September 15, 1950, a copy of which is submitted herewith and identified as Exhibit A, agrees that the work in question is machinist work, but refuses to allow the claim for compensation. The claimant was available to perform the work in dispute if called.

The dispute has been appealed to all the officials of the carrier, who are designated to handle such matters, in compliance with the current rules governing such cases without securing a satisfactory settlement.

The agreement effective October 1, 1922, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that removing and applying the entire assembly of the windshield wiper of diesel unit No. 76 is work that is clearly within the scope of Rule 51 of the agreement of October 1, 1922 which itemizes the machinist classification of work and reads in part as follows:

In First Division Award 5327, already referred to, employes conceded in their statement of facts that "There was a C. & N. W. yard engine available at the time the Grand Trunk crew performed the switching."

In First Division Award 12624, claim of an available yard crew to certain work performed by hostling service employes was denied. Findings stating in part:

"More than this, there is nothing to show that yard crew then on duty would not have done the job had hostlers not done it. Nothing persuasive is presented to show the claimant crew should have been called to do this isolated job."

In Second Division Award 593, claim alleging violation of machinist helpers' classification of work rule was denied. Findings stating in part:

"The joint check of work performed in this case, as submitted by both parties, is of such a minor amount that it should not be deemed a violation of the rule."

Your Board has also held that even where the agreement has been violated, "it is not every such violation that justifies sustaining a claim for compensation." See your Award 1042, which also refers to Third Division Award 1453. Findings in your Award 1042 also state in part, "there was no intention by the carrier of depriving employes under the contract of any work," and the award reads:

"There was a technical violation of the agreement, but under the facts presented it was not such as will justify the claim for compensation."

Your Award 1081 also held "There was a violation of the agreement, but under the facts presented it was not such as will justify the claim for compensation."

In your Award 1210, findings state in part:

"There is no evidence of intent to cross craft lines to defeat the purpose of classification of work rules."

The claim should be denied, as—

The work complained of was done without the knowledge of and without any instructions from an authorized source.

It was of a trivial nature and amount.

There was no intention of carrier to cross craft lines.

There was no necessity for calling claimant for this small job as machinist was on duty at the time of its performance.

Claimant sustained no loss.

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 work of dismantling and replacing windshield wiper motor assembly (except pipe work) under the current agreement is machinists' work.

The record does not disclose that the carrier's representative assigned the pipefitter to perform the work in question, therefore, without establishing a precedent, the claim for pay is dismissed.

AWARD

Claim 1—Sustained.

Claim 2—Dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1952.