

Award No. 1826

Docket No. 1648

2-MKT-FO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly assigned furloughed Machinist Helper E. W. Williams to fill the assignment of Stationary Fireman A. M. Turner on the 4:00 P. M. to 12 Midnight shift on December 31, 1951.

2. That accordingly the Carrier be ordered to compensate Stationary Fireman W. E. Keith in the amount of 8 hours' pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: A. M. Turner, regularly employed as a stationary fireman on the 4:00 P. M. to 12 Midnight shift with a work week of Monday through Friday, rest days Saturday and Sunday, made request on Foreman Forsland to be off on December 31, 1951, a regular assigned work day. The request to be absent was granted by the carrier. The carrier, on December 31, 1951, assigned furloughed Machinist Helper E. W. Williams, who has no seniority rights under the controlling agreement.

The employes' presented a grievance claiming 8 hours' compensation at the overtime rate for Stationary Fireman W. E. Keith, hereinafter referred to as the claimant, regularly assigned to the 8:00 A. M. to 4:00 P. M. shift who was available to work the 4:00 P. M. to 12 Midnight shift on December 31, 1951, if assigned or called. Under date of January 15, 1952, General Master Mechanic A. J. Lewis agreed it was a violation of the rules and advised in writing he would handle for authority to pay the claim. A copy of the letter of January 15, 1952, is submitted herewith and identified as Exhibit A. General Master Mechanic A. J. Lewis advised in his letter of March 10, 1952 that he was advised the claim was paid on the last half of the January payroll, a copy of which is submitted herewith and identified as Exhibit B. The claimant was compensated at the straight time rate of pay for the day in question and under date of March 25, 1952 the undersigned wrote Mr. Lewis requesting that he advise when the difference between

Except as expressly admitted herein, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular the allegations of the employes and organizations' alleged dispute and any and all pleadings submitted by the employes and organizations.

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 Firemen and Oilers of System Federation No. 8 make this claim in behalf of Stationary Fireman W. E. Keith. They contend carrier improperly assigned furloughed Machinist Helper E. W. Williams to fill the assignment of Stationary Fireman A. M. Turner on his shift from 4:00 P. M. to Midnight on Monday, December 31, 1951. In view thereof they ask that carrier be ordered to compensate Keith for such violations for eight hours pay at the overtime rate.

The position of "Stationary Fireman" comes under the Scope rule of the Firemen and Oilers' Agreement with the Carrier. See Rule 1 (a); (A) 3.

Turner was assigned as a regular relief stationary fireman at carrier's Glen Park Enginehouse, Kansas City, Missouri, with a work week from Monday through Friday with hours of service on Monday from 4:00 P. M. to Midnight.

Claimant was regularly assigned to position 5512 with hours from 8:00 A. M. to 4:00 P. M. and so was available at 4:00 P. M.

On Monday, December 31, 1951, Turner requested to be off for that day. Carrier granted this request and used Williams to fill the temporary vacancy. Williams had no seniority rights under the Firemen and Oilers' agreement. Work embraced within the scope of an agreement cannot rightfully be taken therefrom and assigned to employes not covered thereby.

Carrier cites Rules 26 and 27 of the parties' agreement as authority for its using Williams to fill this temporary vacancy.

Rule 26 does provide "that temporary vacancies need not be bulletined until the expiration of thirty (30) days from the date such vacancies occur" but does not authorize carrier to use someone not covered by the Firemen and Oilers' agreement, and holding no seniority rights thereunder, to fill them.

Rule 27 does provide that "New positions or vacancies may be filled temporarily without regard to this agreement pending permanent appointment," not the situation here, but that does not authorize carrier to use some one not covered by the Firemen and Oilers' agreement to fill them. What this language does mean is that while a bulletined position is being posted, and the successful bidder permanently assigned thereto, the new position or vacancy may be temporarily filled from the ranks of the employes covered by the agreement without regard to their seniority.

The claim is made for compensation at the overtime rate. Damages for work lost by violation of the scope of an agreement is the rate of pay

carrier would have been required to pay for having it done if it had been performed by those to whom it was assigned. That, in this case, would have been the regular rate of the position.

AWARD

Claim sustained but on a pro rata rate basis of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1954.