

Award No. 2737
Docket No. 2589
2-N&W-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NORFOLK & WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned a Laborer to operate an electrical overhead crane in the Erecting Shops at Roanoke, Virginia on November 21, 1955.
2. That accordingly the Carrier be ordered to additionally compensate Craneman Samuel Ferguson at the applicable time and one-half rate of pay for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The Norfolk & Western Railway Company, hereinafter referred to as the carrier, operates in its erecting shops at Roanoke, Virginia two one hundred and fifty (150) ton, two one hundred (100) ton and two thirty-five (35) ton electrical overhead cranes which and operated full time on the 7 A. M. to 3:30 P. M. shift Monday through Friday. On the second shift in same shops there are three (3) cranemen regularly assigned from 3:30 P. M. to 11:30 P. M. Monday through Friday.

There are fifty-seven (57) regular assigned electrical overhead cranemen employed in the Roanoke Shops. (See Exhibit A.)

On Friday November 18, 1955, Craneman D. N. Maxey was granted permission from his immediate Foreman R. H. McDermitt, of the erecting shops under whose supervision he works, permission to be off duty Monday, November 21, 1955, from his regular assignment as craneman from 7:00 A. M. to 3:30 P. M.

Samuel Ferguson, hereinafter referred to as claimant, completed his regular assignment on the second shift in the erecting shops at 11:30 P. M. on November 18, 1955, and was available and willing to fill the vacancy created by Craneman D. N. Maxey's absence on the first shift in the erecting shops on November 21, 1955.

There are many other numerous awards that have found past practice is controlling where the agreement does not provide otherwise.

In this case, past practice acquiesced in by the employes, has permitted the filling of vacancies of thirty (30) or less days' duration with qualified operators not holding seniority as such. This fact, in addition to there being nothing in the agreements to require the filling of such vacancies by those holding seniority as electric overhead crane operators, places Item No. 1 of this dispute without foundation.

Item No. 2 of this dispute, requesting the carrier to additionally compensate Craneman Samuel Ferguson at the applicable time and one-half rate of pay is also without foundation due to the facts brought out above.

The carrier respectfully requests that this claim be dismissed.

• **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.

Craneman Maxey laid off for one day. To fill this vacancy carrier used A. A. Aldridge, a laborer who had qualified as a crane operator. Claimant Samuel Ferguson was available to fill the vacancy and now demands pay for the day at time and one-half. The claim is based on Rule 96 which is a pay rule referring to Rule 121 which establishes the rate.

This Division finds that the rule fixing the rate of pay for crane operators does not carry with it exclusive jurisdiction or define the scope of the work covered.

The cited awards and the evidence of the past practice of using helpers or laborers or other qualified cranemen, support our finding herein.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1958.