

Award No. 2959
Docket No. 2807
2-CMStP&P-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist Helpers Dahman and E. Lang were wrongly laid off and their work assigned to foremen and laborers.

2. That accordingly the carrier be ordered to discontinue using foremen and laborers to perform machinist helpers work and compensate the above named claimants at machinist helpers rate of pay, beginning April 1, 1956 until such time as they are properly assigned at Marquette roundhouse.

EMPLOYEES' STATEMENT OF FACTS: The carrier, effective April 1, 1956 laid off the claimants who were the only machinist helpers left at the point. After laying off the claimants the carrier assigned their work to foremen and laborers.

A protest was made to the carriers' master mechanic who declined to remedy the situation. His declination, therefore, necessitated the filing of claim for the two claimants beginning with April 1, 1956.

The claim was filed with the roundhouse foreman who failed to disallow the claim, or request an extension of time, within the 60 day time limit.

On appeal, carrier's superior officers have failed to allow the claim. The agreement of September 1, 1949 and subsequently amended is controlling.

POSITION OF EMPLOYEES: Beginning April 1, 1956 the carrier assigned the machinist helper work at Marquette, Iowa to the three foremen and laborers, and laid off the claimants.

provisions of Article V of the agreement of August 21, 1954 and is therefore barred.

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.

Both parties to this dispute contend that they should prevail, regardless of the merits of the claim, because of the provisions of Article V, Section A, of the agreement of August 21, 1954.

The claimant contends that he mailed his claim to the Roundhouse Foreman on April 30, 1956, and that since carrier did not within 60 days, disallow said claim, that the claim should be allowed.

The carrier, on the other hand, contends that no claim was filed with it within the 60 day period, and that therefore the claim should be disallowed.

Affidavits are submitted in support of each position. We have no means of determining the facts of the matter.

However, it is clear from the record that both before and after April 30, 1956, both parties were fully aware of the facts of the dispute; and both before and after April 30, 1956, the parties discussed the claim, both orally and in writing in an effort to resolve the dispute.

Therefore, we hold that the claim should be decided upon its merits.

The organization contends that Machinist Helpers Dahman and Lang were wrongfully laid off and their work assigned to foremen and laborers.

Claimants were laid off as of April, 1956.

As to the laborers, the record discloses that the laborers did the same kind and type of work after claimants were laid off on April 1, 1956, as they had performed prior to that date.

As to the foremen, Rule 32 (a) provides:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

There were no machinists employed at Marquette, Iowa, the point involved in this dispute.

Machinists can do all the work of the craft, and therefore since 32 (a) permits a foreman to do the work of a machinist he may also do the work of a machinist helper.

Rule 54 (c) does not apply to foremen. There is nothing in the agreement which prohibits foremen from performing work of machinist helpers, under the circumstances here.

Award Nos. 2586 and 2643 of this Division are similar to the instant case.

However in Award No. 2586 where the claim was sustained, the carrier first abolished the jobs of the machinists, and then established the positions of foreman and assistant foreman, and assigned to the occupants of the positions the same duties formerly performed by the laid off machinists.

Such is not the case here. In the instant case the jobs were permanently abolished. And the foremen were not new employees.

Under the facts in this case the claim must be denied. Award No. 2643.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2959

The work performed by these machinist helpers was unilaterally transferred to the mechanical department foremen and laborers at this point and the machinist helpers holding seniority at Marquette, Iowa, were furloughed, a fact which the majority concede.

The agreement in effect between the parties was violated by the transfer of this work from the machinist helpers to the mechanical department foremen and laborers.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner