

Award No. 3156

Docket No. 2731

2-SP(PL)-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the furloughing of former Machinist Helpers W. L. Harvey, R. L. Kraner, Neil Crabtree, L. Wharton and Curtis Jennsion, effective July 26, 1956, the reclassification of said employes as Laborers effective July 27, 1956, and use of said employes from four (4) to eight (8) hours each date thereafter to help Machinists and perform duties recognized by the current agreement as Machinist Helpers' work, for which they receive the Machinist Helper rate of pay while classified as Laborers, is improper, is in violation of the agreement.

2. That accordingly the carrier be ordered to restore W. L. Harvey and R. L. Kraner (hereinafter referred to as claimants) to service as Machinist Helpers and compensate each of the said employes for the difference between the Laborers' rate and the Machinists Helpers' rate of pay for four (4) hours each date starting July 27, 1956 and for each date thereafter, that Laborers M. Crabtree, L. Wharton and other Laborers are used to perform Machinist Helpers' work and paid the Helpers' rate of pay.

EMPLOYES' STATEMENT OF FACTS: The carrier prior to July 27, 1956, employed only one (1) laborer classified as such at the Wendel Roundhouse. Prior to said date the carrier employed five (5) machinist helpers classified as such at this point.

On July 19, 1956 the carrier posted in the roundhouse at Wendel "Bulletin No. 5", employes' Exhibit A, notifying the above named five machinist helpers that effective with close of shift July 26, 1956 they would be laid off due to reduction in force.

work. Employees who are classified as helpers for a specific craft, if available will be used, when necessary to help craftsmen and their apprentices of the specific craft."

Under the provisions of that rule the use of claimants for the machinist helper work forming basis of this claim was entirely proper. Clearly that rule contemplates that employes other than those of a specific craft will be used to help craftsmen and apprentices, the sole requirement necessitating the use of helpers of a specific craft being their availability. Since machinist helpers were not available at Wendel on the dates of this claim, for reasons set forth hereinabove, the use of laborers to assist machinists as was done in this case was entirely proper. Petitioner has not claimed that said laborers were not "competent", as required by the rule.

An examination of the correspondence exchanged on the property in connection with this claim (carrier's Exhibits A, B and C) makes clear that it is petitioner's position that by reason of the fact that laborers on shifts other than those on which claimants were working subsequent to July 26, 1956, were performing some machinist helper's work during their tour of duty and were paid therefor at machinist helpers' rate of pay, there was, in the aggregate, sufficient machinist helpers' work performed at Wendel to justify the employment of two full-time machinist helpers (namely, claimants) at that point. Neither Rule 29 nor 58 in any manner supports that position, nor does any other rule of the current agreement. The maintenance of positions is a managerial prerogative to be exercised consistent with the needs of the service, and carrier is subject to no limitations in the matter of dispensing with positions for which there is insufficient work to justify their existence.

When handling this claim on the property it has been petitioner's position that machinist helper work performed by laborers at Wendel was sufficient to warrant the employment of two full-time machinist helpers.

Contrary thereto, there is not sufficient machinist helpers' work on any of the three shifts at Wendel to justify establishing a machinist helper position on any shift at that location, and petitioner's general chairman was so apprised when handling this claim on the property.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimants were furloughed as machinist helpers on July 26, 1956, together with 3 other employees. The next day all these same employees began working as laborers under the Firemen and Oilers agreement. Their actual function remained essentially the same and the work to be done did not change significantly overnight. In turning in their daily time cards the claimants recorded the number of hours spent on helpers' work and the number of hours spent on laborers' or other kind of work.

The present claim has been advanced on the theory that Rule 29, (Reduction and Restoration of Forces) and Rule 58, (Machinists Helpers) have been violated. The carrier cites Rule 18 (Filling Higher and Lower Rated Positions) as authority for its action. Rule 18 is identical with Rule 20 of the previous agreement by which the Firemen and Oilers were bound, together with the machinists.

The present claim states in essence:

"1. That * * * the furloughing * * * the reclassification * * * and use of said employees * * * to help Machinists and perform duties recognized * * * as Machinists Helpers work * * * is in violation of the agreement.

2. That accordingly the carrier be ordered to restore W. L. Harvey and R. L. Kraner * * * to service as machinist helpers and compensate them for the difference in pay * * * for four hours each date * * * that laborers * * * are used to perform machinist helpers' work."

From the facts at hand we are unable to determine whether helpers' work or laborers' work predominated at Wendel on claim date. The arbitrary division on the time cards into four hours each would indicate an even balance.

A strict application of the pay provisions of Rule 18 would solve this dispute. However, there is no such monetary demand before us. In the absence of such claim we presume that on those occasions when an employee worked more than four hours at helpers work he was properly paid.

We note that this is a continuing claim and that statements offered by employees are dated as late as March 15, 1957 following which time cards of claimants were reviewed by the company for the period of August, September and October 1956. After careful review and analysis of this evidence, we conclude that claimants have not proven that the major portion of their time was devoted to machinist helper duties nor that there was sufficient machinist helper work to be done customarily on any shift to the extent that carrier's failure to include a helper would constitute a violation of the rules. This conclusion is especially valid when full credit is given to the claimants assertions that they were permitted and directed to claim four hours at the helpers rate.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: H. J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3156.

The majority recognize that the carrier furloughed the claimants as machinist helpers and re-classified them as laborers continuing their employment to do machinist helpers work. This action on the part of the carrier was in violation of the current agreement.

The current agreement governing employment of machinist helpers recognizes and preserves the rules governing seniority, rates of pay, assignment of work and the working conditions of the claimants and stands as a protest against the majority's refusal to enforce the controlling agreement. We submit that Award No. 3156 is erroneous.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink