

**Award No. 3161**

**Docket No. 3001**

**2-PRR-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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

**THE PENNSYLVANIA RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement the Carrier unjustly deprived 22 Machinists and 2 Machinist Helpers of a full eight (8) hours employment, in the Air Brake Shop Department of the Juniata Locomotive Shops, when they were sent home while only permitting them to work five (5) hours of their regular assignment on the 3:30 P. M. to 12:00 M. tour of duty on June 24, 1957.

2. That accordingly the Carrier be ordered to additionally compensate each of the affected employes named below in the amount of three (3) hours at the pro rata rate of pay for June 24, 1957:

**MACHINISTS**

G. H. Sharer, Jr.  
M. Dyczko  
G. D. Kyle  
O. C. Murray  
Ludwig Schoch  
H. H. Holland  
W. A. Kuiaawa  
H. E. Imler

**MACHINISTS**

T. H. Crocker  
D. E. Holdeman  
Franz Nachtman  
H. T. Taylor  
E. F. Post  
A. Y. Caswell  
G. E. Baum

**MACHINISTS**

C. R. Bolger  
J. P. O'Donnell  
G. C. Raible  
L. F. Jones #1  
P. H. Detwiler  
J. W. Banks  
S. E. Mulhollen

**MACHINISTS HELPERS**

P. T. Byrnes

A. C. Steele

**EMPLOYES' STATEMENT OF FACTS:** The employes named in the "Claim of Employes" will hereinafter be referred to as the claimants, they were, on that date employed by the Pennsylvania Railroad Company, here-

**III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act, to give effect to the said agreement, which constitutes the applicable agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

The carrier has established that there has been no violation of the applicable agreement in the instant case, and that the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claims of the employees in this matter.

**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 employees 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.

The parties here have entered into the following:

**"JOINT STATEMENT OF AGREED UPON FACTS:**

On Monday, afternoon, June 24, 1957, about 6:30 P. M., there was an extremely heavy rain storm in the Altoona area, which resulted in an accumulation of water over the floor of the Air Brake Shop. Also, due to the accumulation of water in the power ducts, the power for operating machines and lights in the Air Brake Shop failed.

The men from the Air Brake Shop as listed in the above subject were sent home at 9:00 P. M. on Monday, June 24, 1957, due to the above-mentioned conditions."

The men sent home were paid for the hours actually worked. The company claims that Rule 4-L-1 is authority for the action taken. The rule reads as follows:

"Shops closed down—4-L-1. Employees required to work when shops are closed down, dut to breakdown in machinery, floods, fires and the like, will be paid as provided for in the Rate Schedule and Rules 4-A-1 and 4-A-2."

The organization insists that the word "Shops" as used in the rule refers to an entire facility and that the Juniata Shops were not closed down on the day in question. This argument is carried further by showing that scores of men who were within a stone's throw of the airbrake shop were permitted to finish out the day.

From the awards cited we are of the opinion that strike situations on the one hand, and emergency situations such as floods and fires on the other, have been treated differently by the Board. The rule cited here is permissive, and in closing the airbrake shop it was not violated by the carrier.

#### 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 March 1959.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 3161.

The majority in this award erroneously rely on Rule 4-L-1 which is a pay rule and completely ignored. Rule 3-D-1 of the current agreement reads as follows:

"When necessary to make temporary reductions at any point, or in any department or sub-department thereof, either forces, hours, or both, may be reduced. **Hours will not be reduced below forty (40) per week.**"

and since claimants hours were reduced in violation of this controlling Rule 3-D-1, Award No. 3161 is in error.

**R. W. Blake**

**C. E. Goodlin**

**T. E. Losey**

**Edward W. Wiesner**

**James B. Zink**