

Award No. 3895

Docket No. 3923

2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Machinist A. Pintek was unjustly dealt with when the Carrier denied him the Grade "C" rate of pay for repair work performed on mobile equipment such as tractors, lift trucks, fork trucks, electric trucks, etc.
2. That the Carrier be required to compensate Machinist A. Pintek for the difference between the Grade "E" and the Grade "C" rates for all time used on this work, beginning December 17, 1957, until final settlement of this claim.

EMPLOYEES' STATEMENT OF FACTS: A Pintek, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as a machinist, on the carrier's New York Region.

In a letter dated March 22, 1958, the local chairman presented a claim to the foreman, requesting that the claimant be granted the Grade C rate for the duties of locating trouble and making repairs to such equipment as cranes, lift trucks, fork trucks, tractor trucks, and other miscellaneous work. In a letter dated April 10, 1958, the foreman denied the claim on the basis that the work was in accordance with the work classification of the agreement.

On April 17, 1958, the local chairman rejected the decision of the foreman, and submitted the matter to the superintendent of personnel, the next highest officer designated to handle grievances. The superintendent of personnel, in a letter dated May 12, 1958, denied the claim on the basis that such duties have been performed at the Grade E rate for many years.

“ * * * This Board cannot make or amend a rule. It is bound by the agreement which the parties have made. * * * ”

The applicable agreement in the instant case is that of April 1, 1952, Rates of Pay effective February 1, 1951, and it cannot properly be revised or expanded in the manner contemplated in the claim by the unilateral action of one of the parties or by an award of your Honorable Board. The organization should not be permitted to accomplish something through an award of this Division, which may only properly be accomplished through the process of collective bargaining.

The carrier respectfully submits for the foregoing reasons the claim of the organization is wholly lacking in merit under the terms of the agreement and should be denied.

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 of 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 and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant here made repairs to and replacement of parts in gas and electric tractors, lift trucks, fork trucks, and the like at carrier's 37th Street Station in New York. The position had been bulletined as involving Grade E Machinist work in 1947 and had been so filled thereafter until claim dates.

In contending that the position was and is truly a Grade E one, carrier relies not only on past practice but also on the nature of claimant's work, which according to carrier was routine and involved merely and mainly such basic equipment as work bench, vise, and a small number of tools. Petitioner, in arguing that the position was a Grade C one, stresses the ability of claimant and contends that he was repairing plant equipment as set forth for said Grade in the agreement's Graded Work Classification. Petitioner is not specific about the kind of work done by claimant on the trucks, etc., he was repairing.

From the above it becomes obvious that the issue here requires clarification. It is not whether claimant was or is a first rate mechanic and therefore deserving of the C rate, no matter where he works and what he does. The issue is first a factual one: What kind of work was claimant actually doing as of claim dates? Then second, where does this kind of work fall in the Graded Work Classification of the controlling agreement?

As to the first, the Division finds from the record that he was engaged in repairing by himself the above-mentioned kinds of mobile equipment sometimes but not invariably with relatively uncomplicated tools and always with the need for skilled judgment and experience. As to the second, the Division finds as follows: (1) In the agreement's Graded Work Classification of Mechanics, C Grade is described as involving "repairs to plant, road machinery and equipment" and as requiring "men of high grade skill qualified and assigned to do all around work on miscellaneous repairs to tools, machinery and equipment . . .". (2) E Grade work is described as involving among several things, "vise shop work" and "machine work" on a variety of machine tools like planers, slotters, millers, boring mills, grinders, and lathes and as requiring "general work on erecting, enginehouse and vise work . . .". (3) Of the two job descriptions the C Grade one must here be found to cover more nearly the kind of work claimant had been performing. True, he did some vise work. But it was not in the shop, and he did do repairs to equipment as mentioned in the C Grade description.

As to carrier's contention on past practice, it must be found (as it was in Awards 2416 and 2424 involving the same issue and the same parties) that "prior acquiescence in an improper classification does not make that classification proper".

In the light of all the above findings the Division is compelled to rule that the instant claim merits an affirmative award.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of December, 1961.