Award No. 3927
Docket No. 3657
2-CMStP&P-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the current agreement other than Machinists were improperly used to make repairs to Locomotive No. 2376 on siding off main line on October 22, 23, 24, 1958.

2 — That accordingly the carrier be ordered to compensate Machinist Frank Anderson and Machinist John Moe in the amount of 24 hours each at the rate of $2.6080 per hour for Anderson and $2.5480 per hour for Moe.

EMPLOYES' STATEMENT OF FACTS: On or about October 22nd, Engine 2376 was being hauled dead in train going West, when about 30 miles west of Minneapolis, the train stopped to pick up 56 cars and when the train started, the brakes did not release on Engine 2376, causing the wheels to slide which, in turn, caused long flat spots on eight of the driver wheels.

This engine was set out of the train on a siding at a small town called Plato, Minnesota. Master Mechanic W. Gage ordered Mr. Ward, who is a working foreman employed at Montevideo, Minnesota, and Emil Bayen, Diesel Instructor employed at Minneapolis, to go to that location to make repairs to the locomotive by building up the flat spots by the welding process and grinding the weld to form proper wheel contour. This machinist work was performed on the siding.

Machinists Anderson and Moe, hereinafter referred to as the claimants, were employed at the Minneapolis Roundhouse, and were available to be sent to perform this work.

chanic's work at points where no mechanics are employed. There were no mechanics employed at Inwood, Sanborn or Mason City.

* * *

"From the whole record we find that under Rule 32 (a) the foremen were allowed to perform the work herein claimed by claimants."

We respectfully submit the instant claim to be entirely without merit and request that it be denied.

All data contained herein has been made known to the employes.

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 waived right of appearance at hearing thereon.

The claim is that employes other than machinists, namely, a foreman and a diesel inspector, were improperly used to make repairs to a locomotive at Plato.

The record contains an unresolved question of fact concerning the diesel inspector, the Employes stating that he spent three hours performing machinists' work, and the Carrier stating that he did no machinists' work at all, but merely supervised the machinists' work done by the foreman. In the absence of any evidence on the point this Board is not in a position to decide the claim with regard to the inspector.

It is conceded that Foreman Ward was sent out from Montevideo, 88 miles away, and that he performed machinists' work for 19 hours, — 3 on Wednesday, 8 on Thursday and 8 on Friday. Claimants Anderson and Moe were machinists at Minneapolis 45 miles away, with regular assignments from 7:00 A. M. to 3:30 P. M. Claimant Anderson's regular work week included all three days; but Claimant Moe's rest days were Thursday and Friday. While his seniority was limited to Minneapolis, Rule 10 provides for emergency road service, and apparently he could have been used to perform the work which was done by the foreman on the three days.

The Carrier relies upon Rule 32(a), which states:

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

No mechanics were employed at Plato when the work became necessary, but neither was a foreman employed there. If Ward had been working at Plato as a foreman when the need for welding arose, he would literally have been a "foreman at a point where no mechanics were employed" (to paraphrase the rule). But he was a foreman at Montevideo, 88 miles away, where

the work was not required. Consequently, when ordered to do the work at Plato he was not within the provisions of Rule 32(a).

In the Carrier's view the rule entitles foremen to perform mechanics' work wherever on line of road no mechanic is regularly employed.

The intent of Rule 32(a), and in fact of the entire Rule 32, is clearly apparent. It is to avoid both the employment of unneeded mechanics and the unnecessary delay and expense of bringing in a mechanic to do certain work when a mechanic of another craft, or a foreman, is available and competent to do it.

Whether, after the need arose, the Carrier could, at its option, properly bring Ward to Plato for the purpose, would seem to depend upon the intent of the rule. That purpose could perhaps have been justified by showing that a foreman was needed there anyway, and that a machinist was not needed in addition; it might also, perhaps, be justified by showing that the foreman was more readily available than a machinist. But neither circumstance was shown, and the possible validity of such a justification is not presented for decision. The necessary conclusion is that the use of the Montevideo foreman to do brazing at Plato was not within Rule 32(a).

This cannot be considered an unduly strict construction of the rule. For under the alternative the Carrier could at its option send out a foreman to do the work of any craft wherever throughout the system no member of that craft was regularly employed. Neither Rule 32(a) nor the agreement as a whole contemplates any such wholesale shifting or limitation of craft jurisdiction. While the Agreement prescribes point seniority it also provides for emergency road service, and it nowhere limits craft jurisdiction to employment points.

This Division likewise sustained the claim in Award 1761, which arose under an identical rule there designated as Rule 42(a). The Board said:

> "The exception contained in Rule 42(a) should be strictly construed. It comprehends that a working foreman may supervise helpers and perform mechanic's work at a point where no machinist is employed but it does not contemplate that such working foreman may be used generally over the railroad to the prejudice of the rights of machinists who are available to do the work."

In Award 2919 arising on this Carrier the Board reached the opposite conclusion. It apparently overlooked Award 1761 and the fact that the foreman was not at the point where the work was required, until the Carrier chose to send him there instead of a mechanic, to do only mechanics' and not foremen's work.

AWARD

Part 1 of the claim is sustained as to work by the foreman.

Part 2 of the claim is denied as to Claimant Anderson, but is sustained as to Claimant Moe.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.

CARRIER MEMBERS' DISSENT TO AWARD NO. 3927

Another dispute between these same parties and "on all fours" with the instant dispute occurred on March 24, 1956. In the course of handling that dispute on the property, the General Chairman of the Machinists took the same position which the Machinists took in the instant dispute, viz., that a foreman must be employed at a point where no mechanics are employed in order to be able to perform mechanics' work at that point under Rule 32(a). He cited Second Division Award No. 1761 which involved a dispute on another property in support of his position. System Federation No. 76 relied on that position and on Award No. 1761 at page two of its Rebuttal Submission to the Second Division in that dispute (Docket 2685) and incorporated in it as Exhibits 3 and 4 copies of correspondence on the property in which the General Chairman had expressed his position.

The Second Division, with Referee James P. Kiernan sitting as a Member, denied the claim in Docket 2685 in our Award No. 2919, dated July 30, 1958. This was prior to the instant claim date. The decision in Award No. 2919 was sound because the interpretation of Rule 32 (a) which was sought by the Machinist in that case could not have been made without writing into the rule another qualification which the parties themselves did not include in it when they negotiated the rule. That additional qualification would be that the foremen must have been employed at the points where no mechanics are employed in order to be able to perform machinists' work at those points under Rule 32 (a). The only qualification or condition which the parties stipulated in the rule to allow foremen to do mechanics' work was that no mechanics be employed at the points where the foremen performed the mechanics' work.

The soundness of our decision in Award No. 2919 is further exemplified in Award No. 3584, where the same rule was again interpreted by us in still another dispute between these same parties. The sole caveat expressed there was that Rule 32 (a) should not be construed so as to justify any program of evasion whereby mechanics' work is improperly transferred to others under the guise of a reduction of work volume. Such a situation was not even remotely present in the instant dispute.

The Majority asserts two grounds for distinguishing away Award No. 2919 in the present claim. One is that Award No. 1761 was apparently overlooked by the Second Division when it rendered Award No. 2919. The second is the fact that the foreman was not employed at the point where the work was required. It is abundantly evident from the record in Docket No. 2685 that the Division considered both of these factors when it rendered Award No. 2919.

One of the avowed purposes of Congress in establishing this Board was, "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." (Section 2 (5) Railway Labor Act.) Cf. **Slocum v. Delaware, Lackawanna & Western Railroad Corp.**, 339 U.S. 239, Second Division Awards, 2097, 2471, 3023, 3039 and 3216.

This Board can ill afford, at any time, to follow the course which led to Award No. 3927. The same issue between these same parties had been decided in Award No. 2919 after consideration of the same arguments and

in the light of Award No. 1761 as were presented in Docket No. 3657 (Award No. 3927). The previous Award was not shown to have been palpably wrong and it should have controlled the disposition of the instant claim.

F. P. Butler

H. K. Hagerman

D. H. Hicks

P. R. Humphreys

W. B. Jones