

Award No. 3938

Docket No. 3823

2-ACL-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. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the Controlling Agreement on April 2, 1959, when it assigned Electrical Supervisor J. J. Sharpe to install a fuel pump, motor, and fuel filters to locomotive No. 139, at Goldsboro, N. C.

2. That the Carrier be ordered to additionally compensate Machinist T. M. Starling for eight hours (8) at time and one-half.

EMPLOYEES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, assigned Electrical Supervisor J. J. Sharpe, of Rocky Mount, N. C. to make repairs to locomotive No. 139 at Goldsboro, N. C. consisting of fuel pump, motor and fuel filter.

Machinist T. M. Starling, hereinafter referred to as the claimant, is regularly assigned to work at Rocky Mount, N. C., is thoroughly familiar with this type of work and was available on the date in question, this being one of his regularly assigned rest days, and he stood first out for this overtime work.

The carrier was thoroughly familiar with the repairs necessary to be made to locomotive No. 139, at Goldsboro, N. C., because it dispatched electrical supervisor J. J. Sharpe, from Rocky Mount, N. C. with the necessary tools and repair parts to effectuate said repairs.

This dispute has been handled with all officers of the carrier designated to handle such matters, including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustment.

The Agreement of November 11, 1940, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is the position of the employees that the carrier violated Rules 27(a), 102, 104 and Memorandum of Understanding of April 22, 1952, and this claim is predicated on the provisions of Rule 4(a), section (b), and rule 6, section (a) with respect to pay at punitive rate for work performed on an employee's rest days.

service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

(b) If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by railroad actual necessary expenses will be allowed. When an employe is required to go to shops for tools or material before leaving home station he will be paid for the time necessary to cover such service.

(c) Wrecking service employes will be paid in accordance with this rule."

This rule clearly sets forth the rate of pay and travel expense when called for emergency road work away from point employed. Your Board, in denying a similar claim in Award 2919, in referring to this rule on that road, stated, "We do not find this rule is applicable, as it applies only 'when called' for emergency road service away from point of employment." Mr. Starling was not called and the organization so admits.

Both Mr. Pearson, Local Chairman, and Mr. Meeks, General Chairman, admitted in their letters, referred to above, that Mr. Starling had no seniority at Goldsboro.

Mr. Meeks, in his letter August 15, 1959 stated in part: "There is no intention of this claim to usurp the right of road men to make such repairs on line of road as they are capable of doing . . ." Electrical supervisors are road men, as is clearly indicated in Bulletin announcing the appointment of Mr. Sharpe as electrical supervisor. Mr. Meeks, in this statement, admits there was no violation of the agreement.

Local Chairman Pearson, in his letter May 22, 1959 states in part: "By the same token Rule 27 B is not applicable because Supervisor Sharpe is not the regularly assigned Supervisor at Goldsboro, N. C. . . ." (Emphasis ours.) Rule 27(b), as will be observed, makes no reference to regularly assigned foremen, it only says foremen, and Mr. Sharpe was a foreman.

Rule 27(c) reads:

"(c) Foremen are not prohibited in the exercise of their duties from performing mechanics' work."

Mr. Sharpe, as electrical supervisor, was a foreman and under this rule had the right to perform the work in question.

Carrier is firmly convinced that this claim is without merit, and respectfully requests that it 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 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.

This claim is essentially the same as those in Awards 1761 and 3927, an electrical supervisor instead of a machinist having been sent out to perform machinists' work at a point on line of road where there was no mechanic or foreman.

As in those cases no reason was given for not sending out a machinist except the rule that mechanics' work may be done by "foremen at points where no mechanics are employed."

The Agreement does not limit craft jurisdiction to employment points; on the contrary, it expressly recognizes system-wide craft jurisdiction by providing for emergency road service. Point seniority does not have that effect, for it does not deal with the subject of craft jurisdiction but merely relates to seniority rights of craft members as among themselves.

Rule 27(b) cannot reasonably be construed as conferring general craft jurisdiction upon foremen throughout all the Carrier's transportation system except at employment points. As noted in the above two awards, the purpose of such rules as 27(b) is to avoid bringing out a mechanic when a foreman competent to perform the work is reasonably available. The work primarily belongs to the mechanic, rather than to the supervisor (foreman), and if neither mechanic nor foreman is at hand, there must be some tenable reason for sending out a foreman instead; otherwise craft jurisdiction is unnecessarily, and therefore unreasonably infringed.

The record does not show that a machinist was not readily available, or that the supervisor was needed in his own capacity, in which a machinist could not act, or that there was some other good reason for sending out the supervisor instead of a machinist. Consequently the Agreement was violated.

Pay for service not performed is at straight time rate. To that extent the claim should be allowed for the time expended by the electrical supervisor in performance of machinists' work.

AWARD

Claim 1 sustained.

Claim 2 remanded to the property for ascertainment of compensation in accordance with above findings.

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.

DISSENT OF CARRIER MEMBERS TO AWARD 3938

The majority's decision in this dispute is not practical, neither is it supported by the agreement rules cited by the employees.

The dispute was brought about when a mechanical department supervisor assisted a locomotive engineer in changing out a defective fuel pump on the diesel locomotive he was operating at Goldsboro, a location which is some distance from Rocky Mount shops, the home station of the claimant.

The majority ruled that the agreement has been violated but make no reference to which rule was violated. The employees in their submission alleged that the following rules were violated—Rules 27(a), 102, 104, 4(a), section (b), 6(a) and the Memorandum of Understanding of April 22, 1952 between the carrier, the machinists and the sheet metal workers. The award does not cite which of the agreement rules were violated. The fact is none were violated.

The Memorandum of Understanding of April 22, 1952 is not even remotely connected with this dispute. This memorandum is concerned with the work of replacing bronze filters, nugent filters, purolator filters, scavenger pump lines, oil separator pipes and oil coolers which serves the lubrication system of the engine and has no bearing upon the replacement of a fuel pump.

Rule 4(a), section (b), is concerned with paying an employee called to perform work on his rest day. The claimant was not called to perform any work and inasmuch as the locomotive breakdown occurred when regular forces were employed at Rocky Mount shops there would have been no reason to call an employee in to work had it been necessary to send help to the locomotive since the help was available from the regular work force.

Rule 6(a) simply sets forth the rate of pay and travel expense **when an employee is called** for emergency road work away from his home station. This rule does not grant system seniority. The claimant only held seniority rights at his home station. Since there was no requirement for help from the shop forces none were called and neither was the claimant called.

Rule 104 is the scope rule for machinist helpers and no claim has been made for a machinist helper and likewise this rule is not involved.

Rule 102 is the scope rule for machinists, however, the work in this dispute was not covered by this rule because it was not done in the shop and it was not necessary to call for help. Rule 975 of the Standard Book of Rules was controlling and this rule provides for enginemen to make such repairs that they are capable of making when away from locations where mechanical department forces are employed. The employees advised they recognized the rights of the enginemen to do this work and they had no intention of trying to usurp the enginemen's rights. They conceded that Rule 102 does not give the machinists a right to this work away from the shops when the engineman can do the work, therefore, by their own admittance the machinists do not have exclusive rights to this work. They allege a violation because Supervisor Sharpe assisted the engineer and this act of assistance nullified Rule 975 and thereby bringing the work under Rule 102. Apparently this false reasoning was believed thereby resulting in this erroneous award.

The employees in their shot-gun approach to gather support for their position in this dispute also cited Rule 27(a) which reads—"Only mechanics and apprentices regularly employed as such will do the work as per special rules, **except as otherwise provided for in this rule.**" (Emphasis ours.) The

exceptions are listed as section (b) and section (c). Section 27(b), "Foremen at points where no mechanics are employed may do mechanics' work."; Section 27(c), "Foremen are not prohibited in the exercise of their duties from performing mechanics' work."

There are no mechanics of any craft located at Goldsboro. Supervisor Sharpe's territory included Goldsboro, and he (Supervisor Sharpe) was engaged in the exercise of his duties when he assisted Engineer Campbell in changing out the defective fuel pump. Furthermore from the very beginning of dieselization in the railroad industry many carriers, including this carrier, provided supervisors from the mechanical department to assist enginemen in making such repairs and adjustments they were capable of making on line of road in order to protect the equipment and to maintain the flow of traffic without costly delays due to temporary mechanical and electrical failures of the motive power.

There has not been any rule violation and therefore no justification for this award.

For these reasons we dissent.

P. R. Humphreys

F. P. Butler

H. K. Hagerman

David H. Hicks

W. B. Jones