

Award No. 4081
Docket No. 3908
2-SP(PL)-MA-'62

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. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (MACHINISTS)**
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated Rule 37 of the current controlling agreement effective April 16, 1942 as subsequently amended, when Machinists E. M. Shelton, J. R. Blair and J. M. Texeira (hereinafter referred to as claimants) were denied the Foreman's rate of pay, when temporarily used as Foremen to perform all of the duties and responsibilities of an abolished position of Roundhouse Foreman at Carrier's Tracy, California, Roundhouse, on dates specified below, for which service claimants were compensated at Lead Workman's rate and denied the Foreman's rate which they were entitled to receive in accordance with provisions of said Rule 37, captioned, "Foreman — Temporary Relief". Dates on which claimants are entitled to receive additional compensation claimed on their behalf:

Claimant E. M. Shelton, Lead Workman

December 23 - 30, 1959, inclusive.

January 6 - 13, 1960, inclusive.

Claimant J. R. Blair, Relief Lead Workman

December 20 - 22, 1959, inclusive.

December 27 - 29, 1959, inclusive.

January 3 - 5, 1960, inclusive.

January 10 - 12, 1960, inclusive.

January 17 - 19, 1960, inclusive.

Claimant J. M. Texeira, Lead Workman

December 22 - 26, 1959, inclusive.

December 29 - 31, 1959, inclusive.

January 1 - 2, 1960, inclusive.

January 5 - 9, 1960, inclusive.

January 12 - 16, 1960, inclusive.

January 19, 1960.

2. That accordingly, the Carrier be ordered to additionally compensate each claimant the difference between the Lead Workman's rate received and the Foreman's rate for each date referred to hereinabove that claimants were improperly compensated at Lead Workman's rate.

EMPLOYEES' STATEMENT OF FACTS: The primary facts which give rise to this dispute are as follows:

Prior to June 25, 1958, supervision of mechanics and other employes employed on second and third shifts in carrier's Roundhouse at Tracy, California, was performed solely by the positions of roundhouse foremen. These positions with work duties and responsibilities were placed within the scope of an agreement between the carrier and The American Railway Supervisors' Association, effective July 10, 1946. These positions have, since said date been within the scope of said agreement. On June 18, 1958, carrier issued a bulletin abolishing the position of second shift roundhouse foreman also the position of relief roundhouse foreman, effective June 25, 1958. At the time these positions were abolished the roundhouse foremen on said positions exercised supervision over eight (8) men. In addition to such supervision, they handled the dispatching of engines and dealing with dispatchers; assigned all work on the engines performed by the various classes of employes; also assigned the engines for trains dispatched out of Tracy Terminal on their shifts; made the final inspections and exercised their judgment as the engines suitable for service; signed I.C.C. Locomotive Inspection Reports CS 2326, including Forms CS 2420, and I.C.C. Form 1-A retained in the engine cab; answered telephone calls and wrote up turnover book for the next shift; all of this work was performed by the roundhouse foremen on their respective shifts prior to the abolishment of these positions.

On the same day, June 18, 1958, carrier issued "Shopmen's Special Notice No. 1", establishing at Tracy, California, Roundhouse, new positions of lead workmen on the second and third shifts effective June 25, 1958. These new positions of lead workmen took over all the duties and responsibilities of supervision of the forces on the second and third shifts in the roundhouse at Tracy, California, formerly performed by the abolished positions of roundhouse foremen.

Following the abolishment of the foreman's position and the establishing of a lead machinist's position, the American Railway Supervisors' Association filed claim with the carrier contending that carrier improperly abolished the foreman's position and turned the foreman's work over to machinists. The claim was denied by the carrier and subsequently appealed to the Fourth Division N. R. A. B. for adjudication. The Fourth Division under date of December 21, 1959 with the aid of Referee Wilbur A. Royse sustained the supervisor's claim.

Following the issuance of Awards 1435 and 1436 the carrier posted a notice abolishing the lead machinist's position effective with the close of business January 18, 1960 and re-establishing the foreman's position effective January 19, 1960.

clearly shown above that the claim is entirely lacking in merit and if not dismissed, 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 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.

In this case the parties involved, the facts of record, the agreement provisions, and the contentions (including carrier's position on the claim's lack of timeliness) are essentially the same as those in Docket 3901, decided by Award 4080.

It follows that the Award here must be the same.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4081

The majority admits that carrier's unilateral action, subject of this dispute — "claim or grievance" — existed from June 25, 1959 to June 18, 1960.

This claim was presented within the provisions of Rule 38, paragraph (f):

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than sixty (60) days prior to the filing thereof. * * *."

Therefore an affirmative award should have been rendered and claimants retroactively compensated to the extent of the provisions of Rule 38, paragraph (f).

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink