

Award No. 4134
Docket No. 3958
2-JackTerm-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 50, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

JACKSONVILLE TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carrier improperly used N. Macik to perform Carmen's work on April 14 and 15, 1960.

2. That accordingly the Carrier be ordered to compensate Carman L. D. Daughtrey and Carman A. Q. Olsen for eight (8) hours pay at the time and one-half rate for April 14 and 15, 1960 respectively.

EMPLOYEES' STATEMENT OF FACTS: That Carman N. Macik regularly assigned to first shift repair track 8 A. M. to 4 P. M., Thursday through Monday, with rest days Tuesday and Wednesday, was relieved of his carman's duties April 9, 1960, to fill the position of a vacationing car foreman for three weeks ending April 27, 1960. The foreman's job is a first shift job which works Saturday through Wednesday, with rest days Thursday and Friday. On Thursday, April 14, and Friday, April 15, 1960, Foreman N. Macik was used on his rest days to perform carmen's work on the repair track.

POSITION OF EMPLOYEES: It is submitted that the carrier erred when it allowed a foreman to perform carmen's work on his rest days. Rule 24 of the current working agreement which is controlling reads in pertinent part:

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

It is further submitted that when Carman N. Macik accepted the foreman's vacation relief job he assumed the work days, hours of service, rest days and rate of pay of that position. (Awards 1804 and 2957 Second Division, National Railroad Adjustment Board.) It is the position of the employes that the action taken by the carrier in allowing a foreman to work a carman's job on both his rest days was unilateral and arbitrary and shows a complete disregard for the employes' overtime board.

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

The carrier or carriers and the employ 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.

Employes allege that Carman N. Macik, who was regularly assigned to the first shift repair track Thursday through Monday with rest days Tuesday and Wednesday, was relieved of his Carman's duties, April 9, 1960 to fill the position of a vacationing Car Foreman for three weeks ending April 27, 1960; that the Foreman's job is a first shift job which works Saturday through Wednesday, with rest days Thursday and Friday; and that on such Foreman rest days, Thursday, April 14 and Friday, April 15, 1960, N. Macik was used to perform Carmen's work on the repair track. Employes charge this was a violation of the applicable agreement of April 16, 1939, Rule 24 of which in pertinent part reads:

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

It is not disputed that two other Carmen employed at this point, "who were first out on the overtime board", L. D. Daughtrey, on one of his regular assigned rest days April 14, 1960, and A. Q. Olsen, one one of his regular assigned rest days April 15, 1960, were available to perform this work on the days in question.

Therefore, Employes claim:

1. "That . . . Carrier improperly used N. Macik to perform Carmen's work on April 14 and 15, 1960.
2. "That accordingly the Carrier be ordered to compensate Carman L. D. Daughtrey and Carman A. Q. Olsen for eight (8) hours pay at the time and one-half rate for April 14 and 15, 1960 respectively."

To the contrary, Carrier denies that Carman Macik was relieved of his Carman's duties to fill position of a vacationing Car Foreman for the three-week period April 9, 1960—April 27, 1960 "because no vacancy requiring filling in the Foreman Craft existed. Carman Macik was used during that period as a Car Foreman on a day-to-day, as needed, basis."

A review of the record discloses that N. Macik temporarily left his assignment as Carman to fill the position of Foreman while the regular Foreman was on vacation; that in doing so he assumed the work days and rest days of the Foreman's position (Awards 1804, 2957 et al.); that during the three weeks involved he was not regularly employed as a Carman but as a Foreman.

It is the conclusion of the Board that when a Carman is used to fill a Foreman's position, the current agreement prohibits his performance of Car-

men's work during the period of time that he is filling said Foreman's position.

AWARD

Claim sustained without retroactive monetary effect.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1963.