

Award No. 4553

Docket No. 4531

2-BA&P-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

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

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That Machinists W. J. Burke, O. D. Beattie, F. G. Collins, P. J. Duffy, B. A. Schaut, M. R. Ungaretti, H. E. Levengood and Machinist Helper T. L. Thompson were improperly compensated for work performed on Saturday, September 22, 1962.

(b) That the Butte, Anaconda & Pacific Railway Company be required to compensate the above mentioned claimants in the amount of four (4) hours each at the prevailing straight time rate.

EMPLOYEES STATEMENT OF FACTS: On Monday, September 17, 1962 the Butte, Anaconda & Pacific Railway Company, hereinafter referred to as the carrier, posted a notice informing all employees that because of picketing activities of another Union, it would be necessary to make a drastic force reduction in all departments on the railroad, effective at once. A second bulletin was posted stating that because this picketing action had halted all movement of ore and had caused the shutdown of Anaconda Company operations in Butte, Anaconda and Great Falls, all regular positions in mechanical, electrical and car departments are abolished. This notice was to remain in effect until modified, supplemented or rescinded by management.

On Friday morning, September 21, 1962 the claimants were notified by phone by Acting Shop Foreman H. K. Haddick that the strike issue was settled and to report to their regular jobs immediately. At the close of their work shift on Friday, the claimants were told by Mr. Haddick to report for overtime work Saturday morning at the regular starting time as the ore hauling would start at once and the engines would require considerable work on them to have them ready for service. At the close of this shift Saturday, shop time cards marked overtime, day off, were filled out, signed by the foreman and subsequently approved for payment. The overtime pay was received by the claimants as part of their checks on September 28, 1962. This overtime pay was then deducted from their next check and they were so notified per carrier form 212, dated October 16, 1962.

CARRIER'S CONCLUSIONS:

1. Carrier fails to see a basis under the existing agreement or the National 40-Hour Work Week Agreement for the punitive rate of pay for service rendered on an unassigned or unbulletined day of work; i.e. by furloughed employes performing service as extra men.

2. Carrier does not agree with the employes that the various rules cited by them support their claim for overtime pay. (Exhibits not reproduced).

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.

On September 17, 1962, because of a strike against its principal shipper and which would cause it to cease operations, the Carrier notified all Shop Craft Employes that effective at the close of work on that date all regular positions in the Mechanical, Electrical and Car Departments were abolished until the notice was modified, supplemented or rescinded by Management.

On September 17, 1962 the 7 machinists and 1 machinist helper who are the claimants herein held regularly assigned positions, working Monday through Friday.

On Friday, September 21, 1962, by reason of a telephone request from the Acting Foreman, the claimants returned to work. At the request of the Acting Foreman they also worked 8 hours on Saturday, September 22, and each claimant marked his time card to show that the work performed on Saturday was overtime, to be paid at the time and one-half rate. At the next regular pay day, September 28, the claimants were paid in accordance with their marking and their foreman's approval of their time cards, however, on the next succeeding pay day, October 16, 1962, the Carrier deducted the overtime pay. The employes immediately objected to the deduction and have properly processed the matter to this board for determination.

From the record presented, together with the supplemental agreements between the parties referred to therein, we are lead to the conclusion that because the Carrier deducted from their pay the overtime pay referred to, the claimants were improperly compensated for the work which they performed on Saturday, September 22, 1962, and that as a result, their claims for 4 hours' pay at the prevailing straight time rate should be sustained.

AWARD

Claims sustained.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.