



**Award No. 4852**

**Docket No. 4773**

**2-EL-FO-'66**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

---

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

**ERIE LACKAWANNA RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That, under the current agreement, a Machinist of the Erie-Lackawanna Railroad Company at Salamanca, New York, was improperly assigned by the carrier to perform work rightfully belonging to craft and class of Firemen & Oilers — performing duties of supplying and fueling diesel locomotives on Saturdays and Sundays, while the work is performed properly by Firemen & Oilers class of employes from Monday to Friday, the balance of the week.

2. That, accordingly, the carrier be ordered to discontinue this practice of improperly and arbitrarily assigning a Machinist to perform this work on Saturdays and Sundays account of Firemen & Oiler Laborer being off on rest days. It is a strict violation of the current agreement in effect on this property.

3. To compensate the claimant hereinafter mentioned for eight hours each day listed at time and one-half rate of pay because of this violation. The claimant was on his rest days and available for work on the days in question: Firemen & Oiler Laborer J. Dolecki — September 21, 22, 29, 30, October 5, 6, 12, 13, 19, 20, 26, 27, November 2, 3, 9, 10, 16, 17, 23, 24, 30, December 1, 7, 8, 14, 15, 21, 22, 28, 29, 1963; January 4, 5, 11, 12, 18, 19, 25, 26, February 1, 2, 8, 9, 15, 16, 22, 23, 29, March 1, 7, 8, 14, 15, 21, 22, 28, 29, 1964 and each Saturday and Sunday thereafter that this work is performed by employes other than Firemen & Oiler class of employes.

**EMPLOYES' STATEMENT OF FACTS:** At Salamanca, New York, under date of September 16, 1963, a bulletin was posted establishing one seven-day per week Laborer's position on the 5:15 A.M. to 10:15 A.M. and 11:30 A.M. to 2:30 P.M. shift, with Saturdays and Sundays assigned rest days. This seven-day position is filled by one Firemen & Oiler class of em-

"Rule 3(d) - At points where service requirements will not permit starting shifts in accordance with Paragraphs (a), (b) and (c), they may be arranged to meet the requirements of the service by cooperation with employes' committee." (Emphasis ours.)

In the general chairman's letter February 18, 1964 to Chief Mechanical Officer Carlson, he contended that to change the hours of assignment to meet service requirements demands an "agreement" between the parties notwithstanding that Rule 3(d) clearly and unambiguously states that only "cooperation with the employes' committee" is necessary. In this respect, the record shows that Local Chairman W. J. O'Neill of the petitioning organization and local chairmen of the electricians and machinists agreed with carrier officials that the requirements of service supported changing the starting times. Thus, not only were conditions of the rule met, even the strained interpretation of the general chairman were met as "agreement" was reached with petitioner's local chairman and the other local chairmen. It should be noted that the local chairman agreed and helped set up the changes in starting times, hours of assignments and rest days, shown in Carrier's Statement of Facts, during meeting, evidences that he recognized and agreed that carrier's action was proper both under Rule 3(d) and Article VII. The local chairman knew full well that only one man would be on duty in any given period and that the machinist's assignment included hours worked by the electrician and laborer on their rest days. It is significant that the other two organizations made no protest.

As shown earlier, the only demand made by the general chairman throughout handling this dispute on the property was that the rest days of the regularly assigned laborer be filled by a laborer. Rule 2(f) of the parties' agreement provides that "No regular relief assignments will be established with less than five days' work per week" and there was just not five (5) days of relief available. As the general chairman made no request for penalty overtime payments to regularly assigned Laborer J. Dolecki on his rest days, this claim cannot now be heard. Notwithstanding, it is a principle of long standing on all Divisions of this Board that where the claimants have performed no work they may recover only straight time pay. See Awards 1638, 2722 and 2802 of this Board.

### CONCLUSION

Carrier submits that based upon the foregoing facts, reasons and authorities cited, this case should either be dismissed or denied in its entirety.

**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.

It is contended by the Carrier that this case should be dismissed for lack of jurisdiction of this Board to hear it as no conference was held on the property.

Pertinent provisions of the Railway Labor Act pertaining to the necessity of holding a conference between parties to a dispute are contained in Section 2, Second and Sixth which are, as follows:

**"Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute.**

**Sixth. In case of a dispute between a carrier or carriers and its or their employes, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employes, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: \* \* \* and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: \* \* \*."**  
(Emphasis ours.)

It will be noted that on March 17, 1964, when the Vice President-Labor Relations addressed a letter to the General Chairman denying the Claim the following request was made: "Should you care to discuss this case in conference, please advise and I will list this case for discussion at our next conference".

In the General Chairman's reply to that letter on March 24, 1964 he notified the Vice President-Labor Relations the Claim was being appealed and the letter contained the following: "Furthermore, your decision in this instant case precludes any necessity to hold a conference".

The Sixth paragraph of Section 2 of the Railway Labor Act sets up the method of procedure and provides time limits in which a conference shall be held in the event a request is made for a conference. Furthermore, the Second Paragraph of Section 2 provides that: "All disputes between a carrier and its employes shall be considered with all expedition, in conference."

No conference was ever held on the property. It is quite significant that no reference to a conference is mentioned in Employes' original submission. In Employes' Rebuttal Submission it is contended for the first time that a request was made for a conference in a letter addressed to the Carrier on October 2, 1964, six and a half months after Carrier's letter of March 24, 1964 suggesting a conference. Carrier has had no opportunity to answer this contention and we have no right to consider it here. At best it doesn't indicate any attempt to comply with Section 2, Sixth of the Railway Labor Act.

Due to Petitioner's failure to comply with the provisions of Section 2, Second and Sixth, the claim is barred and this Board is without jurisdiction to hear it.

See Third Division Awards 12468 and 13097.

Having reached this conclusion a discussion of Carrier's position that the Claim presented to this Board is different than the one presented on the property is unnecessary.

**AWARD**

Claim dismissed for want of jurisdiction.

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

**ATTEST: Charles C. McCarthy**  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1966.