Award No. 4856
Docket No. 4779
2-PRR-MA-'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. 152, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinist)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement by abolishing machinist positions at Hagerstown, Md., and reassigning the Machinist Craft work they had originally performed to employes of other crafts.

2. That the Carrier be required to compensate the following named claimants for eight (8) hours pay at the applicable machinist rate for March 9, 1963, and eight (8) hours pay for each subsequent day thereafter until settlement of the case.

G. D. Watts	— Machinist
H. A. Kibler	— Machinist
C. W. Armbrester	— Machinist
R. A. Mundorf	— Machinist

This is a continuing claim under the provisions of Rule 4-0-1.

EMPLOYES' STATEMENT OF FACTS: Prior to March 9, 1963, the claimants specified above were employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, as machinist at the carrier's Hagerstown Enginehouse. Their duties consisted of inspecting, repairing and servicing locomotives, and performing other general machinist craft work at Hagerstwon, Md., Chambersburg, Pa., and Cumbo, West Virginia.

Exlusive of Hagerstown Car Shop, where the carrier employed 1 gang foreman, 7 car repairmen, 2 car repairmen helpers, and 1 assigned laborer, the carrier, prior to this dispute, had employed under the supervision of a motive power foreman located at Hagerstown, a force consisting of 1 gang foreman, 6 machinists, 1 electrician, 3 assigned laborers, and 20 car inspectors, who performed the work of the various crafts at the aforementioned Hagerstown, Cumbo and Chambersburg locations.

reference and offered anything to support their claim that such rule was violated. Therefore, the carrier submits their allegation that such rule was violated must fall and any evidence now presented in connection with such rule be totally disregarded.

In view of all the foregoing the carrier asserts that no violation of the applicable Schedule Agreement occured in this dispute and that the employes claim in this dispute should be denied.

However, if, contrary to all of the foregoing, the claim in this dispute should be sustained and award of compensation rendered, your Honorable Board must take into consideration any earnings of the claimants during the period it may be determined they are entitled to compensation. Nothing in the applicable Agreement replaced the general rule of law, recognized in numerous Awards by the National Railroad Adjustment Board, that one claiming a violation of a contract must attempt to mitigate the damage suffered. See Second Division Award 3680 and Third Division Award 10963.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said Agreements, which constitute the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to them. To grant the claim of the employes in this case would require the oBard to disregard the Agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has shown that the Rules Agreement was not violated and that the claimants are not entitled to the compensation claimed.

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.

Following are the facts agreed to by the parties in their Joint Submission:

"JOINT STATEMENT OF AGREED UPON FACTS:

"Effective the close of tour of duty on March 8, 1963, the claimants' machinist positions were abolished at the Hagerstown Enginehouse, Hagerstown, Md.

"Prior to March 9, 1963, the M.E. force at the Hagerstown Enginehouse covered by the System Federation No. 152 consisted of six Machinists.

"Effective March 9, 1963, the M.E. force at the Hagerstown Enginehouse covered by the System Federation No. 152 consisted of two Machinists. One of the two Machinist positions was a relief position."

The Claimants were furloughed following Carrier's reduction of the work force at Hagerstown, Maryland; Claimants contend that, by abolishing Machinists positions at Hagerstown, Maryland and reassigning the Machinist Craft work, they had originally performed, to employes of other Crafts, Carrier violated the controlling agreement, this work being performed at Hagerstown, Cumbo, West Virginia and Chambersburg, Pennsylvania, by employes of other crafts, namely an Electrician and Car Inspectors; they contend the Carrier has violated Article II of the Scope Rule of the Agreement and has misapplied the provisions of Rule 5-F-2 of the Agreement.

It is Carrier's position that prior to March 9, 1963, there was not sufficient work at Hagerstown Enginehouse to justify maintaining as large a force as were assigned, furthermore that Hagerstown Enginehouse, Cumbo and Chambersburg, are all separate points within the meaning of Rule 5-F-2 and that Rule 5-F-2 is the controlling rule in this dispute.

The pertinent portion of Article II, the Scope Rule, as applied to the situation here, is: "Qualified employes of the Crafts as defined in this Agreement shall be used to perfrom the work **except as otherwise provided in this Agreement.**" (Emphasis ours)

Rule 5-F-2 of the effective Agreement provides:

"5-F-2. (Effective 10-15-60) (a) At outlying points where there is not sufficient work to justify employing a Mechanic of each craft, the Mechanic or Mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.

"An 'outlying point' as that term is used in the foreging paragraph is understood to mean a minor inspection or repair facility (enginehouse or car shop) where the total number of regularly assigned positions excluding relief positions covered by the System Federation and Transport Workers Union schedule agreements does not exceed 10 mechanics or 15 employes."

The issue presented is whether pursuant to Rule 5-F-2 Carrier can properly assign work performed by the Machinists at these different stations at sepa-

rate points, to employes of another craft where there is not sufficient work to justify the continuance of the size of the force prior to March 9, 1963.

Claimants have never raised the question of the capabilities of members of other crafts to perform the work of machinists.

It is within the prerogative of the Carrier to abolish positions when there isn't sufficient work to justify the continuance of the size of the force.

In a dispute between the Carrier and the United Railroad Workers Division of Transport Workers Union of America, System Board of Adjustment, Decision 87-65 (Docket No. 111), Referee Robertson in interpreting Rule 5-F-2 of the Agreement stated:

> "The language is all embracive as indicated by the use of words 'any craft' which in this context is synonymous with "every craft'. There are only two conditions to the mingling of work of crafts at outlying points and they are: 1) insufficiency of work to justify the hiring of a mechanic of each craft and 2) capability in the mechanics employed to perform the work of other than their own crafts."

Award 2967 (Abrahams) involves Rule 26 of the Agreement under consideration there which reads, as follows:

> "At points other than Nashville, where there is not sufficient work on any shift to justify employing a mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

It will be observed that this practically identical to the language contained in the first paragraph of Rule 5-F-2.

Claimants having presented this claim have the burden of proving that after March 9, 1963, there was sufficient work to justify employing a mechanic or mechanics of each craft. Other than stating this to be the fact, Claimants have offered no proof to support this assertion.

In the joint submission of the parties in the "Position of Employes" no mention was made of the contention that Hagerstown Einginehouse was not an outlying point within the meaning of Rule 5-F-2. That question was raised for the first time in the employes' submission. Furthermore, the contention that the location of the Enginehouse at Hagerstown was contiguous to the other facilities at Hagerstown was raised for the first time at the Board hearing. For the foregoing reason this factor of the case will not be considered here.

It is further contended by Claimants, that Cumbo, West Virginia, and Chambersburg, Pennsylvania were part of the Enginehouse facility at Hagerstown, Maryland. Without determining this question, it appears that if they were included the total number of regularly assigned positions would not exceed 10 mechanics or 15 employes as provided for in Rule 5-F-2.

> In Award 2967 (Abrahams) it was held:
> "After January of 1954, at the Cravens Shops in Chattanooga, Tennessee, there was not sufficient work to justify employing a Mechanic of each craft. Only Mechanics of the Machinists', Electricians' and

Carmen's craft were there employed. Consequently, under the said Rule, the Mechanic or Mechanics so employed at the said Cravens Shops could be assigned so far as he may be capable to perform the work of any craft that may be necessary even though the Mechanic of the other craft may also be on duty."

Within the issues and facts presented in the instant case, it appears that this Board must reach the same conclusion and deny Claimants' claim.

AWARD

Claim denied.

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.

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