

Award No. 5047

Docket No. 4758

2-CRI&P-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the terms of the controlling agreement the Carrier improperly assigned Road Foreman of Equipment J. Baier to the duties of cutting pinion gear off #1 wheel of Diesel Unit 1324, at Eldon, Missouri on November 10, 1963.

2. That accordingly the Carrier be ordered to compensate Machinist B. F. Donoho, Armourdale, Kansas, who was first out to work overtime in the amount of eight (8) hours at time and one-half rate of pay at the prevailing rate of pay for Machinist Welder.

EMPLOYES' STATEMENT OF FACTS: On November 10, 1963 Diesel Unit 1324 failed at Eldon, Missouri. The failure was caused by a seizure of the traction motor commutator on No. 1 pair of wheels, this resulted in the locking of the wheel and necessitated the cutting off of the pinion gear in order to allow wheel to rotate. This Unit was later brought to Armourdale, Kansas for repairs. When word was received at Armourdale about the condition of Diesel 1324, Road Foreman of Equipment C. Williams loaded hoses, gauges and cutting torch in his car with the intention of going to Eldon to perform the work of cutting off the pinion gear. However, while enroute to Eldon, Missouri, Mr. Williams became involved in a traffic accident and was relieved by Road Foreman of Equipment J. Baier who did perform the work of cutting off the pinion gear on Diesel Unit 1324.

The distance from Armourdale, Kansas to Eldon, Missouri is approximately 130 miles. The travel time to and from Eldon would approximate six (6) hours and the work performed would consume another two hours.

POSITION OF EMPLOYES: It is respectfully submitted that the action of the carrier in assigning road foreman of equipment, J. Baier to the performance of machinists work violated the provisions of Rules 28 and 53.

"Rule 28 Assignment of Work. (a) None but mechanics or appren-

In the award, which involved an admitted violation of the machinists' agreement, your board held in its opinion:

"The record does not show that the claimant sustained pecuniary loss because of the violation."

Your board sustained the employees' contentions but denied their claim that carrier be required to compensate the claimant involved for the four hours claimed.

In the instant case, claimant was first out on the overtime board. He did not suffer any loss. He worked his regularly assigned hours.

CONCLUSION: Carrier has shown that the organization's claim fails on four counts. First, the machinists at Kansas City have no contractual right to work performed at Eldon; second, the work performed by Road Foreman Baier in no way violated the machinists' agreement; third, the organization has claimed the time and one-half rate of pay in this case while previous awards have ruled that claims for money must be limited to the straight-time rate; and fourth, claims are not valid unless time is actually lost by the claimant involved.

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.

The work in question was performed on a disabled diesel at Eldon, where no mechanics are employed, by a road foreman of equipment, or diesel supervisor. The Claimant was a machinist regularly assigned at Armourdale, but first out on the overtime board there. The claim was based on the ground that "this is a just claim as engine is assigned to our point and engine was brought back to Armourdale for new wheels." It was denied on the ground that his seniority did not extend to Eldon, which was over 130 miles away.

It is apparent that the assignment point of the engine, or the place to which it was brought from Eldon for repairs, had no bearing upon the question of Claimant's preferential right to perform this necessary preliminary work at Eldon, which his seniority did not extend, but where he could have been sent for emergency road service, like other regularly assigned machinists from that and other points.

Whether it was improper for the road foreman of equipment to perform the work depends upon a disputed question of fact. The Employees allege that he was improperly assigned to cut off the pinion gear and was sent out instead of a machinist to do it. On the other hand, the Carrier alleges that he was set out to inspect the unit and have it sent to the Carrier's diesel repair facility at Kansas City, and upon inspection found that it could not be moved

without first removing the pinion gear; that he therefore proceeded to do so in the absence of a machinist, as authorized by Rule 28 (a).

The Carrier has road foremen of equipment, or diesel supervisors, who are responsible for maintenance of diesels in specified territories, one of whom did the work complained of. When they are engaged in their regular duties they are entitled under Rule 28 (a) to perform mechanics' work where no mechanics are employed.

It cannot be definitely determined from the record that the diesel supervisor was not set out to perform his normal duties of inspection in his territory, but was sent to perform a definite machinist's job already determined by competent authority to do what was necessary. Consequently the claim must be denied.

AWARD

Claim denied.

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

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

Dated at Chicago, Illinois, this 3rd day of February, 1967.