

Award No. 5488
Docket No. 5178
2-SJRT-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James E. Knox when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO (Machinists)

ST. JOHNS RIVER TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on January 15, 1965, the work contracted to the class and craft of Machinists at the Carrier's Jacksonville, Florida, Diesel Shop was turned over to Foremen, Carmen, Laborers and others not covered by the controlling agreement, and, that as a consequence thereof, Machinist F. O. McKenzie was wrongfully furloughed.

2. That accordingly, the Carrier be ordered to restore this work to the class and craft of Machinists, and that Machinist McKenzie be returned to his former position with pay for all time lost, and, in addition, be made whole for all fringe benefits lost, such as, vacations, holidays and insurance premiums.

EMPLOYEES' STATEMENT OF FACTS: F. O. McKenzie, hereinafter referred to as the Claimant, was regularly employed by the Southern Railway System, hereinafter referred to as the Carrier, as a Machinist at the Jacksonville, Florida, Diesel Shop, with a seniority date of June 1963. The Claimant was furloughed at the close of his shift effective January 15, 1965.

While employed, the Claimant was assigned to the 7:00 A. M. to 3:30 P. M. shift, Monday through Friday, and prior to being furloughed performed all the duties required of a Machinist, including, but not limited to the following:

Locomotive inspection as required by the Interstate Commerce Commission, Bureau of Locomotive Inspection and by rules of the Carrier.

- Changing out and testing air brake equipment.
- Adjusting and testing brakes — renewing brake shoes.
- Engine Truck work.
- Lubricating running gear.
- Adjusting and repairing engines of locomotives.
- Changing and/or adding oil to engines and compressors.
- Door and Shutter work.

Thus it is obvious that the Board is without authority to do what the Association here demands and that it has heretofore recognized this fact in its prior awards.

With respect to the demand that the claimant "be made whole for all fringe benefits lost, such as, vacations, holidays and insurance premiums," the claimant has been paid for all vacation and holiday pay due. As to insurance premiums, attention is directed to Second Division Award 4866, Referee McMahon, in which the Board held that:

" * * * We make no finding in reference to insurance premiums for hospitalization and life insurance. We can find no requirement in the agreement between the parties which makes any reference to payment of premiums by Carrier. Such claims for insurance is not a wage loss. * * * "

Here the Board should follow the reasoning of its Award 4866.

Thus the evidence is clear that the Board is without authority to do what is demanded in Part 2 of claim.

CONCLUSION

The Terminal Company has shown that:

(a) Claim submitted to the Board is **not** the claim presented on the property and handled in the usual manner and is barred.

(b) The controlling agreements were **not** violated and the claim is **not** supported by them.

(c) The Board is without authority to do what is demanded in Part 2 of claim.

Claim being barred and the Board being without authority to do what is demanded should be dismissed for want of jurisdiction.

All evidence here submitted in support of the Terminal Company's position is known to employe representatives.

The Terminal Company not having seen the Association's submission reserves the right after doing so to make reply thereto and submit any other evidence necessary for the protection of its interests.

(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 were given due notice of hearing thereon.

The carrier has been erroneously named in the claim and submission as the "Southern Railway System" or "Southern Railway Company." The proper name of the carrier is the St. Johns River Terminal Company. This error was not prejudicial for the carrier was not misled by the error and has responded to the claim and submission.

The issues raised by this claim are controlled by Award 2-5487 and the findings of that award are hereby adopted as findings in this case. Within the framework of that award, we specifically find that the claim submitted to this Board is the same claim that was handled in the usual manner on the property; that there are mechanics employed at this point; that the evidence is sufficient to show that there is a bona fide dispute about whether there is sufficient work to justify employing machinists at this point; and that the carrier's unjustified refusal to participate in the joint check required by Article IV of the agreement of January 27, 1965, delayed this determination to the possible detriment of the employees.

AWARD

The parties are directed to conduct a joint check of whether there is now, and whether there was at the time a joint check should have been made, sufficient work to justify employing machinists at this point and to report the results of that check to this Board within sixty (60) days in accordance with the above findings. Pending receipt of such report, the proceedings before this Board will be continued.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1968.