Award No. 5726
Docket No. 5584
2-CRI&P-MA '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES;

1. That the Chicago, Rock Island and Pacific Railroad Company violated the provisions of the Agreement when it commenced using J. E. Elam on August 18, 1966, as a Machinist at Fort Worth, Texas.

2. That accordingly the Carrier be ordered to pay Machinists Parsley, Poor, Plaster, Boydstrom and Cavin at time and one half rate for all hours equal to the number of hours worked by Mr. Elam to be equally divided among the claimant Machinists beginning August 18, 1966 and continuing until violation is stopped.

EMPLOYEES' STATEMENT OF FACTS: Prior to August 18, 1966, the beginning date of the dispute, the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, had five Machinists regularly assigned at Fort Worth, Texas. They were J. F. Plaster, W. H. Poor, S. R. Parsley, W. D. Boydstrom, and T. S. Cavin, hereinafter referred to as claimants. On July 11, 1966, Mr. James E. Elam was hired as shop laborer, upgraded to Machinist Helper on August 10, 1966, and the Carrier commenced using him as a Machinist on August 18, 1966, and has continued to employ him on Machinist's work on a full time basis since August 18, 1966. Claim was filed on a continuous basis on September 2, 1966. (See Exhibit A). Payment of same was declined by letter of September 14, 1966 from Ass't. Master Mechanic Mr. G. D. Thompson. (See Exhibit B). On September 19, 1966, he was advised that his decision was not acceptable. (See Exhibit C). The claim was subsequently appealed to Mr. G. E. Mallery, Vice President Labor Relations, on November 2, 1966 (Exhibit D) by the General Chairman and was declined on December 14, 1966 (Exhibit E). Conference on claim was held on August 23, 1967 with no satisfactory settlement reached.

In the course of that conference, the record was reviewed, including

for the proposed change. No such evidence was forthcoming. The rule, as written, contemplates any change in starting times will be predicated on the requirements of the service. While the rule assures that the parties will exert their best effort to arrive at a mutual understanding, the failure to achieve this end does not carry with it the power of the organiaation to, in effect, veto any such changes.

We conclude that the changes made were to meet the exigencies of the service, were not arbitrarily made, or in bad faith and thus not in contravention of Rule 2. See also Award 1320 of this Division."

Based upon the facts of this case and the awards cited by the Carrier there is no valid orreason able basis or rule support for this claim. Therefore, your Board is respectfully requested to deny this claim.

(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.

The Shop Crafts Agreement of October 16, 1948, provides in pertinent part:

"RULE 28. ASSIGNMENT OF WORK. (a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

and the Machinists' Special Rules:

"RULE 52. QUALIFICATIONS. Any man who has served an apprenticeship or has had four (4) years' experience at the machinists' trade . . ."

On October 1, 1952, the parties entered into a Promotion Agreement, which in material part reads:

"Section A.

In the event there are no machinists available under the provisions of the Agreement of October 16, 1948, and the Carrier is unable to employ competent journeymen machinists as required, second class machinists, apprentices and helpers in the craft may be advanced from the lower classifications to fill vacancies or new jobs . . .

"Section B.

2. The selection of apprentices and helpers for temporary advancement to first class machinists **will be made only upon written approval of the local chairman of the Machinists,** and local Carrier officer having jurisdiction over such points, a copy of such approval to be furnished to General Chairman of the Machinists." (Emphasis added)

It is admitted by Carrier that J. E. Elam: (1) was not a qualified machinist as defined in Rule 52; and (2) was assigned to a machinist position at Fort Worth, Texas, effective August 16, 1966, the duties of which position he continued to perform after that date. Further, Carrier admits that it assigned Elam to the machinist position without having obtained "written approval of the local chairman of Machinists." See, Section B(2) of the Promotional Agreement, **supra.**

Carrier's right to temporarily assign unqualified machinist to a machinist position is absolutely contractually enjoined in the absence of satisfaction of the mandated indispensable condition precedent—"written approval of the local chairman of the Machinists." There are no exceptions. We have no statutory authority to prescribe any. The parties are bound by the bargain made. If either party desires exceptions the procedure prescribed in the Railway Labor Act is good faith collective bargaining. Our jurisdiction is confined to interpretation and application of the existing pertinent agreements in the light of principles of contract construction relative to collective bargaining agreements freely entered into by the parties. We will sustain paragraph 1 of the Claim. Cf. Award Nos. 4926, 5152, 5180 and 5628.

We now consider paragraph 2 of the Claim—a prayer for monetary damages (loss of wages) occasioned by the violation of the agreements.

Carrier admits that the five Claimants are machinists employed at Fort Worth—either fully qualified machinists or employes holding such positions in compliance with the agreements.

Carrier's defense, in its Submission, is not that being able to satisfy the contractual restraint of Section B(2) of the Promotional Agreement in filling the machinist vacancy at Fort Worth it was required "to fill such vacancy (the work of the vacancy) with the other machinist at Fort Worth (Claimants herein) working on their rest days and on an overtime basis (all at payment of overtime rate), amounted to an unjust, cumbersome, inefficient, expensive and totally unrealistic approach to this problem, which was disrupting its normal operations." This, we find, is an admission that the work performed by the employe assigned to the machinist position, in violation of the agreements, would have been performed by Claimants—albeit on an overtime basis—in the absence of Carrier's violation of the agreements.

The consequences of lawfully required compliance with agreements are not the concern of this Board. Novation of the agreements is left to the parties.

Carrier argues that Claimants were gainfully employed and therefore, notwithstanding a finding of agreement violation, it is established by the case law of the Board that they have suffered no monetary damage. We analyze the Awards cited by Carrier in support of the contention:

Award No. 4926: Monetary damages were denied because Claimants "were deprived of no work and suffered no monetary loss;"

Award No. 5152: Monetary damages were denied because "neither is there a showing that he (claimant) would have been called to work at overtime;"

Award No. 5180: Monetary damages denied because Claimant "worked his assignment . . . without any loss of earnings during the entire period;"

Award No. 5628: Monetary damages denied because "there is no evidence to support a finding that the work of the disputed positions would have been performed by claimants on an overtime basis under any circumstances."

The cases cited by Carrier are easily distinguishable from the instant case.

First, we proceed from the established premise that work of a class or craft exclusively reserved to the class or craft by agreement may not be rightfully assigned, by a carrier, to employes stranger to the agreement provisions other than to the extent of exceptions prescribed in the agreement. Second, the wrongful assignment of work to a stranger to agreement provisions, in violation of the agreement, damages the employes collective bargaining unit defined in the agreement as a whole. Third, employes within the collective bargaining unit who would have performed the work reserved to specified employes within the unit, absent agreement violation, are contractually entitled to monetary damages equal to what they would have received for performance of the work absent the violation—be it at pro rata or overtime rate.

The next premise is founded in Carrier's admission that Claimants herein had and would have continued to perform the work, on an overtime basis, which we have found, **supra**, was assigned to J. E. Elam in violation of the agreements.

We find: (1) Claimants were deprived of work and suffered a monetary loss (Cf. Award No. 4926); (2) there is undisputed evidence in the record, Carrier's admission, that absent the violation Claimants "would have been called to perform the work on an overtime basis (Cf. Award No. 5152); (3) Claimants suffered **a loss of earnings** because of Carrier's violation of the agreements (Cf. Award Nos. 5180 and 5628).

We therefore, will sustain paragraph 2 of the Claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

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