

Award No. 6037

Docket No. 5839

2-CRI&P-MA-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Rock Island and Pacific Railroad Company violated the provisions of the Agreement when it began using Machinist Helper Calvin Perry, Jr. as a machinist on May 31, 1968 at Fort Worth, Texas.

2. That accordingly the Carrier be ordered to pay Machinists S. R. Parsley, W. H. Poor, T. A. Reiser, S. R. Cowan and T. S. Cavin eight (8) hours' pay at time and one-half rate for Machinists for each day that Machinist Helper Calvin Perry, Jr. has been assigned to Machinists' work since May 31, 1968 and continuing until the violation is stopped.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 31, 1968, 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 S. R. Parsley, W. H. Poor, T. A. Reiser, S. R. Cowan and T. S. Cavin, hereinafter referred to as the claimants.

On May 17, 1968 Mr. Calvin Perry, Jr. was hired as a machinist helper. Until May 17, 1968 Mr. Perry had been employed by the Texas and Pacific Railroad as a shop laborer. On May 31, 1968 the carrier began using Machinist Helper Perry as a machinist, and has continued to assign him to machinists' work on a full time basis since that date.

Claim was filed on a continuous basis on June 21, 1968. Payment of same was declined by letter of August 9, 1968 from Ass't. Master Mechanic J. C. Kelly. On August 21, 1968 he was advised by the local chairman that his decision was not acceptable and would be appealed. The claim was then appealed to Mr. G. E. Mallery, Vice President Labor Relations, on August 27, 1968 by the general chairman and was declined on October 3, 1968.

The penalty herein sought by the organization is without support by the agreement, or, in fact, is highly speculative and therefore, it must not be assessed.

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

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.

After 17 years employment as a Shop Laborer, Carrier hired a Mr. Calvin Perry, Jr., as a Machinist Helper on May 17, 1968. On May 31, 1968, Carrier began using Machinist Helper Perry as a Machinist, and has continued to use him as such on a full time basis since that date. The Organization urges that the employment of Perry as a Machinist is contrary to an Agreement reached by negotiation between Carrier and the General Chairman dated May 20, 1968, to the effect that Carrier agreed to hire a Journeyman Machinist to fill the vacancy on which Machinist Helper Perry was subsequently placed. The Organization cites Rule 52 regarding qualifications of Machinists which requires four years; and Rule 28 requiring that none but Mechanics or Apprentices regularly employed as such shall do Mechanic's work. Carrier challenges the Organization's contentions by stating that no Machinists were available at the time Perry was employed as a Machinist; and that the Organization refused, upon request of Carrier, to upgrade Machinist Helper Perry to fill the position of Machinist dated October 1, 1952, and referred to as a Promotional Agreement. Carrier also contends that there is abundant evidence to show that Perry has satisfactorily carried out his duties of Machinist since so being employed. Carrier also maintains that Claimants were fully employed at all times and that they have failed in their burden of proof to show that Claimant would have been used in overtime to perform the work performed by the employe Perry and that Claimants are, therefore, not entitled to a monetary award. The record further shows that Claimant Poor was on leave of absence due to illness prior to May 31, 1968, through July 1, 1968.

This Board will follow Award No. 5726 (Dorsey) which sustained a similar claim. However, we will deny any monetary relief on behalf of Claimant Poor from May 31, 1968 through July 1, 1968. Also, the claim will be sustained for all Claimants only at the pro rata rate.

AWARD

Claim sustained at the pro rata rate of pay except for Claimant Poor, which is denied, during the period May 31, 1968, through July 1, 1968.

Claim sustained for Claimant Poor subsequent to July 1, 1968, at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.