

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers
{
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the Controlling Agreement entered into by and between the Pennsylvania Railroad Company and the International Association of Machinists and Aerospace Workers, dated April 1, 1952, as amended, when they moved, at the instance of Management, Machinist W. L. Malone off his regular position of Job #717A, Second Shift, in Department #380, and required him to work in Department #360.
2. That accordingly, the Consolidated Rail Corporation be ordered to compensate Machinist W. L. Malone in the amount of three (3) hours additional pay for the following days: 10/27/77, 10/28/77, 10/31/77, 11/1/77, 11/2/77, 11/3/77 and 11/4/77.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 parties submitted a joint statement of agreed upon facts as follows:

"JOINT STATEMENT OF AGREED-UPON FACTS:

Effective with the date of October 25, 1977, Claimant W. L. Malone was awarded a position as a machinist on the second trick in the Juniata Machine Shop, Saturday and Sunday rest days, with duty: 'Perform any bench work and floor work in connection with repairs to journal boxes of all types. Must be familiar with methods, procedures, tolerances and limits.'

"At the time in question, Management was in the process of relocating the journal box work from the Juniata Welding Shop to the Juniata Machine Shop.

On the dates for which claim is presented, Claimant Malone performed his bulletined assignment at the Juniata Welding Shop for reason the facilities being installed at the Juniata Machine Shop were not completed to handle the journal box work.

Claim was presented to the General Foreman on November 8, 1977, and denied on November 17; progressed to the Manager - Labor Relations on December 8; discussed at meeting held on December 19; and denied January 4, 1978. Joint Submission was requested by the Local Chairman on January 18, 1978.

Case No. L-7-359(M), File No. 237-A, is being held in abeyance for further discussion pending decision in this case.

POSITION OF EMPLOYEES:

Claimant W. L. Malone was awarded a position as a Machinist on second shift in the Juniata Machine Shop Department 380 Job no. 717-A effective October 25, 1977. This job was advertised on Bulletin 481 and was posted 10/12/77.

Management was in the process of relocating the Journal Box work from the Juniata Welding Shop Department 360 to the Juniata Machine Shop Department 380. This is also a violation of the Controlling Agreement, because the Journal Box work is in the E&M Pool, and any work in the E&M Pool is to be performed in the E&M Building only, as stated in the Controlling Agreement Rule 5-F-4(b).

On the date for which the claim is presented, claimant Malone was at the instance of Management moved off his regular Bulletin Position job no. 717-A Bulletin 481 in the Juniata Machine Shop, and required to perform his regular assignment at a Location other than that of his regular assignment for (8) hours on each of the following dates: 10/27/77, 10/28/77, 10/31/77, 11/1/77, 11/2/77, 11/3/77, and 11/4/77. This is a direct violation of the Controlling Agreement, especially Rule 2-A-1 (e).

We contend Management should never have readvertised Job 717-A until the facilities in Department 380 was completed.

POSITION OF CORPORATION:

It is an AGREED-UPON FACT in this case that:

1. On the dates for which claim is presented, Management was in the process of relocating the journal box work

"from the Juniata Welding Shop to the Juniata Machine Shop. (Emphasis added.)"

2. On the dates for which claim is presented, Claimant Malone performed his bulletined assignment at the Juniata Welding Shop for reason the facilities being installed at the Juniata Machine Shop were not completed to handle the journal box work. (Emphasis added.)

The Memorandum of Understanding made on February 10, 1965, pertaining to the application of the last paragraph of Rule 2-A-1 (e), provides that the penalty payment in question shall not be applicable in circumstances where the movement from one position to another is necessitated by emergencies, such as was present in the instant case where it was not possible for the Claimant to perform his bulletined assignment at the Juniata Machine Shop."

It should be noted that the second sentence of paragraph two of the employee's position is not germane to the claim before this Board.

In the case before us it is apparent that claimant was not inconvenienced by the action of the Carrier. He simply fulfilled the work of his new bid at his old location due to the fact that the new location was not ready to function. The only movement was on paper. Mr. Malone was awarded a bid at a new location which had not yet been effectuated because the location was not ready.

It may be true, as the Organization contends, that the job should not have been bid until the facilities were completed in order to avoid the payment of penalty. However, some lead time is necessary in bidding new positions and it seems improper to penalize the Carrier for following an orderly and necessary process.

In the case at bar while there may have been a technical violation of the literal language of the contract, Claimant was not moved or inconvenienced in any manner. On the basis of this record he is not entitled to penalty pay.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1980.