

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles 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, particularly Rule 2-A-1(e), of the 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 insisted on Machinist G. J. Beck repair windshield wiper motors, when he had work on his regular bulletined position.
2. That accordingly, the Consolidated Rail Corporation be ordered to compensate Machinist G. J. Beck, Man No. 537378 in the amount of three (3) hours for the following days: January 29, 30, 31, 1979; February 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 20, 21, 23, 26, 27, 1979; March 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 20, 21, 1979.

Findings:

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

The carrier or carrier 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 claimant requests penalty pay in the amount of three hours per day for every day in which he was required by the carrier to repair windshield wiper motors.

The claimant's regular assignment as a machinist was to "repair D22, D24, UC and 26L brake valve portions". It is the contention of the carrier that even though the position may have been advertised as indicated above, that when the claimant obtained the position, wiper motor repairs were a part of the duties and were performed thereafter by the claimant on a regular basis without any exception being taken until the commencement of the instant claim ten months later.

The carrier has limited its defense in this matter to past practice by the claimant himself for ten months, and by the incumbents in this position prior to that.

At one point in the proceedings, the carrier representative alleged that the advertised position required the claimant to repair all types of locomotive air brake equipment and that wiper motors would be included in such broad description. This allegation is not apparent from the record and the carrier does not continue to rely upon this defense.

The organization does not deny that previous employees in this position had repaired windshield wiper motors, but asserts that, at that time, the position description included windshield wipers. The organization has provided previous job descriptions which included windshield wiper repairs among the duties to be performed by the machinists involved. The carrier has not specifically responded to this clarification by the organization.

The organization alleges that by the action of the carrier in removing the duties of windshield wiper motor repair from the incumbent since the filing of this claim, this is an admission that the assignment to the incumbent of this duty had been improper. The Board does not accept this contention. It is possible that the carrier is merely being judicious in the event that this Board should rule against it in this matter and does not wish to incur any additional expense in this regard. The objective view is that whether the carrier would continue to perform in violation of the alleged complaint of the organization has in this instance no material impact on the facts leading up to that point.

The organization had not responded to the allegation of the carrier that the incumbent himself had been performing such duties for some ten months prior to the time that he filed this grievance.

In reviewing the entire record, we must hold that the repairing of wiper motors was not a part of the claimant's advertised duties. In light of the organization's clarification of the activities prior to the assuming of this position by the claimant with respect to other positions having included windshield wipers in them, the carrier has not overcome the allegation of the organization on the record and for our purposes without such refutation, we will assume that the function of windshield wiper motor repair was not included in the position description which the claimant had assumed.

The organization has pointed out that it was not consulted concerning the claimant's being required to perform these duties not included in the position description. We also find that there is no indication that the organization had complained to the carrier that these functions not included in the job description were being required of the claimant. The carrier has alleged that the claimant was performing these functions for some ten months since he had acquired this position. Since this is not denied on the record, then we assume that it is true.

We find that the carrier has not established on the record that there was a past practice which included windshield wiper repair in the job which the incumbent filled ten months prior to the filing of this claim, and further find that on the record, the claimant performed the duties of windshield wiper repair not included in his published job description for some ten months prior to the time that the claim was filed.

We further find on the record no indication that the organization complained to the carrier of the matter complained of in this complaint.

The Board will not find for the claimant in this instance. The granting of a penalty pay award to enforce a provision of the agreement between the parties is designed to require the carrier to perform strictly according to the provisions of the agreement in order to avoid such penalty. At least in a factual situation such as this where there are serious questions as to the facts involved about which reasonable people may differ, we feel that it is incumbent upon the claimant to notify the carrier in a timely manner of the facts complained of so that the carrier can take corrective action promptly.

To delay a complaint over such an extended period until after accumulating extensive punitive expenses will not be supported by us in this particular matter.

We will not reward the claimant for his delay in formally complaining of the matters included in this claim.

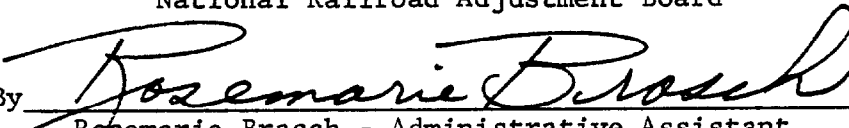
The filing of the claim in this instance has served its purpose. We have ruled that the repairing of windshield wiper motors is not included in the job description. The carrier on its own motion has stopped requiring such repair work. If the carrier has since reinstituted this function, it has done so at its peril. We further note that since penalty pay was involved, the claimant himself has suffered no loss in this regard. For the reasons cited above, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of June, 1982.