

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

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

That Carrier violated Rules 29 and 31 of the controlling Agreement when they permitted Machinist J. J. Mathews to work eight hours on his regular assignment, then work eight hours as foreman (sixteen hour days) commencing June 4, 1980, at Carrier's facility at Avondale, Louisiana. Violation is continuing.

And, Carrier be ordered to compensate Machinists J. Stelly, R. P. LeBlanc, E. J. Orgeron, M. J. Waguespack, J. S. Ehret, and C. J. Gagneaux time and one-half rate of pay for this continuing violation. Compensation to be equally distributed to the Claimants.

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 Organization brings this claim for an unspecified amount of overtime compensation on behalf of six Machinists stationed at the Carrier's Avondale, Louisiana facility. Beginning on June 4, 1980 and on certain dates thereafter until April, 1981, the Carrier assigned Machinist J. J. Mathews to work both his regular day shift position as a Machinist and a third trick temporary foreman position within single twenty-four hour periods.

The Organization characterizes the assignment of Machinist Mathews to his regular craft shift as well as (later the same day) to a supervisory position as a continuing violation of Rules 29 and 31 of the applicable Agreement. The Organization argues that Rule 29 (implies) prohibits a temporary Foreman from also performing his regular craft shift. According to the Organization, once the Carrier appointed Machinist Mathews to a Foreman's shift and once he accepted the temporary supervisory assignment he was presumptively barred from also protecting his regular assignment within one day.

On the other hand, the Carrier contends that neither Rule 29 nor Rule 31 prevented the Carrier from assigning Machinist Mathews to the two separate shifts so long as he did not perform Mechanic's work while temporarily filling the foreman's shift. To support its contention, the Carrier cites an August 27, 1971 letter agreement it negotiated with another shop craft organization (Brotherhood Railway Carmen of the United States and Canada) where those parties expressly agreed that "... should a carman be used temporarily as a foreman under Rule 31 of the agreement, he will not be permitted to work his regular assignment for that day". The Carrier asserts that a separate letter agreement with the Carman would not have been necessary if the applicable shopcraft contract already prohibited the dual daily assignments involved in this claim. Since there is no similar agreement between the Organization herein and the Carrier, the Carrier believes it retained the discretion to assign Machinist Mathews to his regular craft position and a temporary foreman's shift within a single day.

The Carrier also argues that this claim should be summarily dismissed due to vagueness. While the Organization did not name each Claimant in the initial claim dated July 24, 1980, the claim did refer to "all available Machinists on the Avondale Seniority Roster" which constituted sufficient identification of the Claimants since they could be readily ascertained. Also, the Carrier alleges this claim was not timely filed. This Board finds that the Organization properly progressed this complaint as a continuing claim pursuant to Rule 32(d); though retroactive monetary relief cannot be allowed for more than sixty days prior to the initiation of the continuing portion of the claim.

The pertinent portions of Rule 29 and 31, on which the Organization places reliance, state:

Rule 29 "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft..."

Rule 31 "Employees used temporarily to relieve Foremen will receive the Foremen's rate of pay and shall work the regular hours of the Foremen while so used."

Rule 31 did not expressly bar the Carrier from assigning Machinist Mathews to work two separate and distinct shifts in one day; one as a Machinist and the other as temporary foreman. During the shifts where Machinist Mathews was utilized as a temporary foreman, he did not perform any work reserved to the Machinists craft. Also, he did not perform acting foreman duties and simultaneously protect his regular assignment so Rule 29 has not been violated.

Another shop craft organization and this Carrier negotiated an agreement which forbid the Carrier from allowing a mechanic to protect his regular assignment on a day when the mechanic also temporarily fills a foreman's position. Thus, we conclude the gravamen of this dispute is more appropriately a subject for collective bargaining. Absent a clear prohibition in Rules 29 and 31 and absent an ancillary agreement similar to the one in effect between the Carmen and the Carrier, we must deny this claim.

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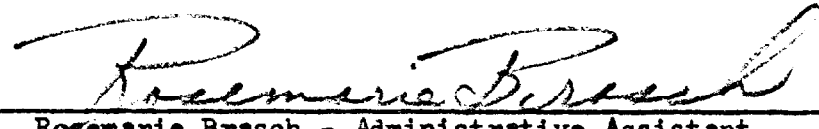
Award No. 9238
Docket No. 9363
2-SPT-MA-'82

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 22nd day of July, 1982.