Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7457
SECOND DIVISION Docket No. 7325-T
2-SPT-MA-'78

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

Dispute: Claim of Employes:

1. That the Carrier violated Rule 57 and Memorandum "A" of the current controlling Agreement when on June 11, 1975 and July 3, 1975 it assigned Water Service employes to change oil and filters and perform routine maintenance on Ingersoll-Rand PAC-AIR cycloidal air compressors at the West Colton Facility.

2. That, accordingly, the Carrier be ordered to additionally compensate Machinists C. W. Arnold, L. Linderman and G. C. Delcid (hereinafter referred to as Claimants) eight (8) hours each for June 11, 1975 and July 3, 1975.

3. Additionally, the Carrier be ordered to refrain from assigning employes other than Machinists to perform repairs and/or service to above-referred-to air compressors.

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 Organization claims maintenance work on rotary type air compressors used for the Carrier's car retarder system at its West Colton Yards. The claimed work was performed by workers of the Brotherhood of Maintenance of Way employes on the dates at issue. The Brotherhood of Maintenance of Way Employes was properly notified of the dispute but did not submit a position on the matter.

The compressors in question had been in service for more than two years prior to the dispute, and Maintenance of Way employes assisted in the original installation of the equipment.

In support of its position, the Organization relies on the Classification of Work Rule (Rule 57), Memorandum "A", and its "historical practice" of work on air compressors.

Rule 57 reads as follows:

"RULE 57

CLASSIFICATION OF WORK

Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building (in shops), shafting and other shop machinery; ratchet and other skilled drilling, reaming and tapping; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on super heaters; oxyacetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; shipyard machinists' work; and all other work generally recognized as machinists' work."

Memorandum "A" signed by the Carrier and by the General Chairman of six crafts, including the Organization's General Chairman, reads in part as follows:

"Memorandum 'A'

MEMORANDUM OF AGREEMENT

In connection with and supplementary to the Motive Power and Car Departments Agreement which became effective April 16, 1942, it is recognized by the employes represented by System Federation No. 114, through their several General Chairmen and the Southern

"Pacific Company (Pacific Lines), that in and by said agreement, numerous changes have been made in the 'Classification of Work' and other Rules under which men have heretofore been working, and a great deal of detail and description of the work has been eliminated, which may result in one craft or class requesting or contending for work that is being performed by another craft or class.

In recognition of the facts above recited, and in order to avoid confusion at the local points and provide an orderly determination of the items of work not specifically stated in the 'Classification of Work' and other Rules of the several crafts, it is agreed that existing practices will be continued, unless and until otherwise decided by conference and negotiation between the General Chairman involved, and the General Superintendent of Motive Power, for purpose of uniformally applying such decision wherever necessary on the railroad.

It is also agreed that the work specified and referred to in said agreement means only such work as comes under the jurisdiction of the General Superintendent of Motive Power ..."

Also involved is a Memorandum of Agreement between the Carrier and the Organization, dated January 22, 1973, which reads as follows:

"This Agreement is made this 22nd day of January, 1973 in conformity with the provision of Article I, Employe Protection, Sections 2(a) and (b) thereof as set forth in Mediation Agreement Case No. A-7030 of September 23, 1964. The scope and purpose of this Memorandum of Agreement is to fill this Company's need and intention to establish a sufficient force of Mechanical Department employes at West Colton to adequately fulfill the service requirements in connection with locomotive work pertaining to the maintenance, servicing and repair of locomotives.

...

2. The foregoing contemplates the discontinuance of work and duties of Mechanical Department employes at Indio and Colton pertaining to the maintenance, servicing and repair of locomotives in its entirety and transfer thereof to West Colton as well as the discontinuance of a portion of certain work and duties of Mechanical Department employes at Los Angeles

"pertaining to the maintenance, servicing and repair of locomotives, including scheduled repairs to road and yard locomotives consisting of R1 and R2 as indicated on forms CS 2632-A and CS 2632-B and minor non-scheduled repairs to said equipment to the extent necessary to correct defects referred to in Appendix 'A' of this Memorandum of Agreement and transfer thereof to West Colton."

The Board finds that the Organization's claim is insufficient to find that the Carrier has violated its various agreements with the Organization in the assignment of work involved herein.

The January 22, 1973, Memorandum of Agreement is clearly limited to "scope and purpose" to "service requirements in connection with locomotive work pertaining to the maintenance, servicing and repair of locomotives." The rotary type air compressors here involved are to an entirely different purpose -- operation of the Carrier's car retarder system. Thus this Memorandum of Agreement cannot be relied upon by the Organization in this instance.

The 1962 Memorandum "A" -- even if applicable on other bases -- is also confined to "only such work as comes under the jurisdiction of the General Superintendent of Motive Power" (a Carrier title now known as Chief Mechanical Officer -- System). Again, the work in question does not fall within this category, but is part of the Carrier's yard operations.

The Organization's Classification of Work Rule surely contemplates the performance of work on air compressors. However, careful examination of the Classification of Work Rule shows that exclusive coverage is not granted for the specific operation in dispute. This is especially the case when the Rule is coupled with the limitation of Memorandum "A" and the 1942 Memorandum of Agreement as noted above.

Award No. 6493 (Bergman), dealing with a similar situation, clearly covers the Board's reasoning in this case. The Award states in part:

"We need not argue over the meaning of classification of work rule. The issue in this case is whether or not it applies to the present situation. Second Division Award No. 3682 stated in the Findings, with reference to erecting, assembling and installing shelving in the storehouse department claimed by sheet metal workers, the following -- the shelving and frames were not fabricated or constructed on the property but were purchased prefabricated -- and came knocked down, to be assembled without tools or mechanical skills. They were set up in the storeroom by the storekeeper and his assistant

"to replace wooden shelving, formerly used. This was not building, erecting, assembling, installing or fabricating, such as would customarily be done by sheet metal workers, and the claim should be denied.

Awards No's 3171 and 3172 are cited in Award No. 6253, discussed above, and are referred to here because the carrier in those two cases is the same as in this case. The Agreement is the same including the understanding that it shall apply to those who perform the work specified in the Agreement in the Maintenance of Equipment Department. The claims of shop craft unions in both cases were denied because the work was not performed in the Maintenance of Equipment Department and the Agreement did not apply.

The effect to be given to restrictive language of the agreement was again demonstrated, in Award No. 2695. Sheet Metal Workers claimed the right to install metal lockers pre-fabricated and prepared for easy assembly in the yard offices. The Agreement was restricted to employes who perform work outlined in the Agreement in the Maintenance of Equipment Department among other departments specified. The claim was denied because the disputed work was not performed in a department specified in the agreement.

Petitioner has the burden to prove its case. The weight of the decisions favor the carrier under the facts of this case. The classification of work rule of the sheet metal workers is not in dispute. First to be considered is whether or not the Agreement applies to this situation. Evidently the agreement of the parties to restrict the work specified in the Agreement to the Maintenance of Equipment Department is controlling. This is not a bar to work of the craft being assigned outside the shop but it restricts the right to demand the work. The affidavits of sheet metal workers that their work has been performed for the Materials Department is not inconsistent with this findings."

A W A R D

Claim denied.

Award No. 7457
Docket No. 7325-T
2-SPT-MA-'78

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 7th day of February, 1978.

LABOR MEMBER'S DISSENT TO

AWARD NO. 7457, DOCKET NO. 7325-T

The majority in Award No. 7457 has reached a conclusion inconsistent with the facts of record, the applicable agreement rules, making this Award in palpable error and requiring dissent.

This netural gratuitiously states:

> "The Organization's Classification of Work Rule surely contemplates the performance of work on air compressors."

However, this expansiveness isn't allowed to run amuk, since he then commences the fishing expedition to get the Carrier off the hook by stating:

> "However,careful examination of the Classification of Work Rule shows that exclusive coverage is not granted for the specific operation in dispute."

It is incomprehensible just what is expected from the Organization when standards are utilized with such abandon and "flexibility". The record irrefutably shows that such work is not mentioned in any other craft rules on that property and that the Machinists perform it at every point on the entire system including the point wherein this disputed work is located prior to the installation of new equipment. The response of the Carrier to this is in complete confirmation even on Page 15 of their Submission wherein was stated in pertinent part.

> "Carrier does not deny the fact that Machinists have been assigned to work on air compressors at Los Angeles and at other terminals xxxxx."

Their only defense was then a very weak position that this disputed work was of a newer model and not generally located in the shop area.

Their "shop area" contention is nullified by the facts of record that this same condition applied at other points where Machinists have always performed this work. The Carrier utilization of the above word "generally" even though not correct is still an admission of sorts. Of particular note the Carrier did not list one single point to support this "generally" terminology, and so this is nothing but an unsupported allegation. This Neutral was fully cognizant of the fact that at this instant point the "shop area" encompassed where these air compressors were located.

The "newer model" argument is a nullity also because numerous precedents hold that such a condition does not remove work from contractual coverage. Apparently this was realized by this neutral since it wasn't in Award reference. However, to overcome this hurdle, he turned this argument into coverage by a different Carrier department coverage. Such an incorrect and vicious ruling would allow any Carrier to negate all agreement work coverage through machinations and semantics of internal management restructuring over which labor has no control or say.

Still another error in this long listing, occurs wherein an attempt is made to interpret the agreement as:

> "The January 22, 1973, memorandum of agreement is clearly limited to 'scope and purpose' to' service requirements in connection with locomotive work

pertaining to the maintenance, servicing and repair of locomotives.' The rotary type air compressors here involved are to an entirely different purpose --- operation of the Carrier's car retarder system xxxxx."

The facts of record portray the complete fallacy of such reasoning and statements. This record will not be burdened by quoting the dozens of references, from both sides, correctly stating that the new compressors would also supply air to the retarder system as well as continuing for the older models the supplying of air to the mechanic shops and facilities for locomotive and car repairs. So the former mechanical department utilization continued unabated which could and should have continued work coverage.

Even the Third Party failed to advance any claim contention which can also be only construed as a recognition of the proper work coverage belonging to the Machinist craft. So this Organization met all of what it thought were standards of these neutrals, i.e. established rule coverage, exclusivity in both rule coverage and practice, the practice was sustained with system wide proof, history,tradition, custom, etc etc etc.

Incorrect reasoning flows even to the sole precedent cited in the Findings and which was Award No. 6493. The facts therein are so distinguished as to be ready discernable by any casual observance i.e. different craft, carrier, rules and different work. In fact that award was largely premised on the fact that the involved work didn't require the tools and skills of the craft. This difference is readily discernable wherein the instant case the Carrier contends that it required special training to attain the skills needed to

repair and/or service these work items. The Machinists had the skills and trade tools to perform the work on previous models and certainly could have done so herein since even the Carrier didn't raise any such contention.

Temptation is evidenced to state that this majority applies two standards in such rulings - one for the Carrier and one for the Organization, but this compilation of errors would indicate a fishing hole full of standards. If one doesn't suit, in a will, wish or want fashion, then go fishing for some more with each and every one militating for the industry interests.

Award No. 7457 is therefore, completely erroneous and without value as precedent and which this vigorous dissent is directed.

G. R. DeHague
Labor Member