

Award No. 3849

Docket No. 3594

2-AT&SF-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current controlling Shop Craft's Agreement, carrier management improperly assigned other than machinists to fabricate and erect a freight car lining paper folding machine used in the carrier's car department planing mill at Amarillo, Texas.

2. That accordingly the carrier be ordered to pay Frank Floyd and J. C. Metcalf, Machinists, Amarillo, twenty-four hours additional compensation each at pro rata rate account such improper assignment.

EMPLOYEES STATEMENT OF FACTS: Construction of the device in dispute was assigned to Carman R. H. Grooms of Amarillo. Work involved consisted of laying out, fabricating and assembling certain mechanical parts such as gears, pulleys, sprockets, chains, bearings, shafts, belts, paper cutting attachment and other mechanical appurtenances used in the manufacture and assembly of a tool used to fold and cut paper to lengths needed to line freight cars for shipment of bulk merchandise.

Although machinists at Amarillo were used to machine certain parts used in the construction of this device, all other work involved thereon was performed by Carman Grooms.

Claimants are regularly assigned as journeymen machinists at Amarillo; were readily available and completely competent to perform work needed incidental to the fabrication and assembly of the paper folding machine in question.

POSITION OF EMPLOYEES: It is submitted that in conformity with Rule 52 of the controlling shop craft's agreement, reading in part as follows:

"Rule 52. Machinists' work shall consist of laying out, fitting, adjusting, . . . of metals used in building, assembling, maintaining, . . . and installing . . . tools and machinery . . . and other shop ma-

was improperly applied by not assigning machinists to build and erect the machine involved in this dispute is not only without support of the agreement rules, but also without merit and the claim of the employees in the instant dispute should be denied in its entirety.

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 employees 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 were given due notice of hearing thereon.

A carman who was not a machinist, but who was familiar with the cooping of potash cars with paper, on his own initiative experimented with an old electric wringer type washing machine to devise equipment for the more efficient cutting and crimping of the paper for this work. He was allowed to continue this effort, during his spare time on the job.

In accordance with his ideas machinist employees constructed the necessary cut-off bars and timing apparatus. He experimented with the old washing machine and these parts and was able to devise a time-saving piece of equipment.

The claim is that he thereby performed machinists' work, which under Rule 52 consists of "laying out, fitting, adjusting * * * of metals used in building, assembling, maintaining, * * * and installing * * * tools and machinery * * *."

It is apparent that this experimental or inventive work is not of the nature usually performed by railroad machinists, and the question is whether past practice has considered it as an infringement of their jurisdiction.

During the presentation of the claim on the property it was stated on behalf of the employees:

"While we have taken cognizance of Mr. Hartman's remarks that the machine was constructed by a carman as a result of his own ingenuity without blueprints by trial and error method, we believe you will agree that many mechanical devices have been constructed through the years on the carrier's property in a similar fashion. Our records will even show where Mr. Hartman paid a claim several years ago in favor of machinists at Albuquerque account carmen constructing a car wheel axle journal cleaning machine on a trial and error method without blueprints."

The General Manager replied that the instance mentioned differed from this claim in that there the carmen were not experimenting or inventing, but were merely copying a machine seen in the car shops of another railroad. He added that in any event the case was settled on a "without prejudice" basis. The employees' representative did not deny these statements but merely replied that the employees were not accountable for language used by management in settlement of claims. With regard to the latter point it would seem that settlement of a claim offered with the proviso that it should not constitute

a precedent, and accepted without elimination of his proviso, cannot properly be held to constitute a precedent.

In any event it is only one instance of such claim and settlement, although admittedly "many mechanical devices have been constructed through the years on the carrier's property in a similar fashion."

Under the circumstances of this case we cannot conclude that a violation of the Rules has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

LABOR MEMBERS DISSENT TO AWARD NO. 3849

From time memorial machine experimental work has been done on the railroads in shop tool rooms by machinists.

Rule 51 reads:

"Any man who has served an apprenticeship, or has had four (4) years' experience at the machinists' trade, and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive, shall be considered a machinist." (Emphasis ours).

Rule 52 reads in part:

"Machinists' work shall consist of laying out, fitting, adjusting
* * * of metals used in building, assembling, * * * machin-
ery * * *."

The majority erred in making this award by disregarding two rules of the current agreement, therefor the claim should have been sustained.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink