

Award No. 4082
Docket No. 3813
2-SLSW-MA-'62

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. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O.
(MACHINISTS)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier damaged the Machinists' craft, particularly Machinist H. R. Wilshire, when on May 11, 1959, a Boilermaker was assigned to remove and reapply the sand box to Diesel 948, at Pine Bluff, Arkansas, in violation of rules of the controlling agreement.

2. That accordingly, the Carrier be ordered to refrain from assigning other than Machinists to the removal and application of sand domes or boxes that have as their purpose the sanding of rails.

3. And that Carrier be ordered to compensate Machinist H. R. Wilshire for four (4) hours at pro rata rate for May 11, 1959.

EMPLOYEES' STATEMENT OF FACTS: Machinist H. R. Wilshire, hereinafter referred to as the claimant, was employed as machinist at Pine Bluff, Arkansas, on the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, and held regular assignment in the Back Shop, working from 7:00 A.M. to 3:30 P.M., Monday through Friday, with Saturday and Sunday rest days.

Engine No. 948 was in the Back Shop undergoing routine repairs, when on Monday, May 11, 1959, Boilermaker P. M. Gray was assigned to remove the RB sand dome.

There are four sand domes on this class of locomotive, situated on the wall, approximately over each wheel group, some of which are welded to car body, others being fastened in an upright position with six ½-inch cap screws, and the sand box itself is about 30 inches in width and 10 inches in depth, and about 60 inches in height. It is equipped in all other respects identical to the sand dome on the older steam type locomotives, and functions in exactly the same manner and for the same purpose.

and running boards, metal headlight boards, wind sheets, engine tender tanks, fabricated steel tender frames (except such parts of steel tender frames as are necessary to be brought to blacksmith or car shops for repairs), building and repairing metal pilots; the laying out and fitting up of any sheet iron or sheet steel work made of 16 gauge or heavier (except car work), including fronts and doors, grates and grate rigging, ash pans, front end netting and diaphragm work, removing and applying all stay bolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks (except fuel oil storage tanks) and drums; applying and removing arch tubes, operating punches and shears for shaping and forming, pneumatic stay bolt breakers, air rams and hammers, bull, jam, and yoke riveters; boilermakers' work in connection with building and repairing of steam shovels, derricks, booms, housing, circles, and coal buggies, water service boilers, when brought to shops; I-beam, channel iron, angle iron, and T-iron work, all drilling (except as provided in Rule 53) cutting and tapping and operating rolls in connection with boilermakers' work; oxy-acetylene and electric welding on work generally recognized as boilermakers' work, straightening, patching, chipping, caulking and riveting reservoirs of tank cars when cleaned, and all other work generally recognized as boilermakers' work on this Carrier."

While the sand domes on steam locomotives and the sand boxes on diesel locomotives both were used to store sand for use on the locomotives, this did not necessarily require that the same craft perform work required in connection with both types of sand storage facilities. For example, machinists maintained the throttle on steam locomotives, but on diesel locomotives the throttle stand or controller is maintained by electricians.

Also, when sand boxes, as distinguished from sand domes, were maintained on steam locomotives, they were applied and maintained by boilermakers. That is, the oil burning steam locomotives had a sand box in the deck attached to front of tender, which provided sand the firemen used to sand out the flues. These sand boxes were made of sheet steel, and were generally approximately the same size as the sand boxes on the diesel locomotives. There was no claim that machinists should perform work in connection with such sand boxes. Thus even on the same locomotives, the fact that they had done work on sand domes on top of boilers did not have the effect of giving machinists right to work on sand boxes in the deck of the locomotive.

When the diesel locomotives were placed in service with sand boxes quite different from the sand domes, it was obvious that the work on such boxes fell under the boilermakers' classification of work instead of the machinists' classification, and it has been so handled.

The carrier respectfully submits that the claim is not supported by the rules, and should be denied.

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 Employees' Submission incorporated as an exhibit the letter of General Chairman J. B. Carpenter of the Boilermakers' craft, dated June 11, 1960, which states as follows:

"In regards to your request for a letter of clearance in order that you may progress your claim to the National Railroad Adjustment Board, Second Division, on account of the work of removing and applying sand boxes to diesel locomotive 948 on May 11, 1959, I wish to advise that I have investigated this matter and find that it is an established practice on the St. Louis Southwestern Railway for the Machinists' craft to remove and apply sand boxes to diesel locomotives.

Therefore, in view of the established practice on this railroad for the Machinists' craft to remove and apply sand boxes for the purpose of sanding rails, I agree that the carrier erred in assigning the removing and applying of the sand boxes to diesel locomotive 948 to the boilermakers' craft, and further agree that the Machinists' craft have a legitimate claim to the work until changed by agreement between the Boilermakers and Machinists' organizations."

By reference the contents of this letter became part of the Employees' Submission, which concluded with this statement:

"All matters herein referred to in support of the Employees' Position have been the subject of correspondence or discussion with the Management."

The Carrier's Rebuttals did not deny that statement nor take exception to General Chairman Carpenter's letter except to answer it by denying knowledge of any instance in which a machinist had removed or applied a sand box on a diesel, and by insisting that it was always done by a boilermaker.

The Carrier refers to a similar claim which the Employees withdrew and was therefore dismissed in Award 3236. The Employees state that "because of a procedural defect it was withdrawn from the Board without prejudice to the position of the Employees." Neither the award nor the record shows the date of final denial on the property or the reason for the withdrawal, but the record does show that it was withdrawn without prejudice. Consequently, the withdrawal constituted no admission and the dismissal award has no weight as a precedent.

In any event, since the Boilermakers disclaim this work and concede the Machinists' right to it under established practice, there seems to be no point in concluding that it nevertheless belongs to the Boilermakers.

The record does not show that the claimant sustained pecuniary loss because of the violation.

AWARD

Claim 1 sustained to the extent indicated in the findings.

Claim 2 sustained.

Claim 3 denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of November, 1962.

**OPINION OF LABOR MEMBERS CONCURRING IN PART
AND DISSENTING IN PART TO AWARD NO. 4082.**

We concur in the findings and award insofar as it upholds the right of the Machinists' Craft to perform the instant work. However, we cannot concur with the findings that "The record does not show that the claimant sustained pecuniary loss because of this violation," for the reason that it is impossible to reconcile this holding with the holding that the Machinists' Craft should have performed the instant work.

The fact that the named claimant worked on the date specified in the claim is of no importance.

The hard facts are that the employees of the Machinists' Craft were deprived of their right to perform the instant work, and the claim on behalf of an individual or individuals is only incidental thereto.

Second Division Award No. 3405 and other awards of this Division have determined that for violations of agreement provisions the claimants (on duty) be compensated at the pro rata rate of the craft or class to which the work is assigned by agreement. The same remedial treatment should have applied in the instant case.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink