

Award No. 5346

Docket No. 5134

2-MP-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the Controlling Agreement, particularly Rules 26 and 52, and Letter of Understanding of May 1, 1940, when they arbitrarily transferred work belonging to the Machinists' Craft to the Electricians' Craft beginning January 7, 1965, Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the following Machinists in the amount of four (4) hours each at the punitive rate on the dates appearing next to their names account they were available and should have been called to perform this work:

W. H. Logan	January 7, 1965
R. L. Heerboth	January 8, 1965
B. J. Flemister	January 9, 1965
B. R. Brant	January 10, 1965
C. P. Long	January 11, 1965
K. H. Holman	January 12, 1965
L. P. Miles	January 13, 1965
L. L. Steele	January 14, 1965
V. E. Griffin	January 15, 1965
G. E. Johnson	January 16, 1965
D. E. Vie	January 17, 1965
J. H. Bobbitt	January 18, 1965
W. F. Gifford	January 19, 1965
J. M. Johnson	January 20, 1965
J. B. Hollingsworth	January 21, 1965
J. A. Hale	January 22, 1965
A. P. Zajac	January 23, 1965
T. G. Holman	January 24, 1965
D. M. Chisam	January 25, 1965
D. Campbell	January 26, 1965

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintained a force of machinists at the Union Depot, Little Rock, Arkansas for many years. They also maintain a force of machinists at the North Little Rock Diesel Shop which is located just across the river from the Little Rock Union Depot (approximately one-half mile distant), and machinists have been assigned by bulletin at the Little Rock Union Depot to perform machinists' work, a fact substantiated by Employees' Exhibit A-1 through A-6, attached, which are copies of bulletins assigning machinists to perform work at the Union Depot. However, beginning January 7, 1965, the Carrier assigned an electrician to perform machinists' work on diesel units Nos. 12, 22, 335 and 333 at the Union Depot in Little Rock, although approximately 229 machinists (3 shifts) are employed just across the river in the North Little Rock Diesel Shop and who not only hold contract to perform this work, but were available had they been called to perform this work, i.e., making the proper mechanical inspection test on engine automatic brake valves including safety feature, checking of brake cylinder pressure, adjustment of brake travel when needed due to excess shoe wear, inspecting of main air reservoir safety appliance, check of wheels for defects such as shell out spots, cracked wheels, high flanges and flat spots, Diesel engine rocker assemblies, air boxes for water leaks and broken rings and the crank case for excess smoke and overheated bearings and other mechanical defects pertaining to the diesel engine.

The Employees refer your Honorable Board's attention to the Employees' Claim outlined previously listing twenty (20) Machinists, hereinafter referred to as the Claimants, who were available on the dates appearing next to their names if they had been called.

This work is contracted exclusively to the Machinists' Craft, and when the Carrier arbitrarily assigned this work to other than Machinists, they deprived the Claimants of their contractual rights, which is a violation of the Controlling Agreement, and constitutes the basis of the claim.

This matter has been handled up to and including the highest designated officer of the Carrier, who has declined to adjust it.

The Agreement of June 1, 1960, as amended, is controlling.

POSITION OF EMPLOYEES: About late 1950 the employees at Little Rock, Arkansas, requested consolidation of the forces at North Little Rock and Union Depot, Little Rock, Arkansas, and following negotiation an agreement was signed at St. Louis, Missouri on August 12, 1952, consolidating the seniority rosters of mechanics, "B" mechanics, apprentices and helpers of the crafts of Machinists, Boilermakers, Sheet Metal Workers, Electrical Workers and Carmen, and the Employees herewith direct your Honorable Board's attention to Employees' Exhibit B, which is a copy of former Chief Personnel Officer, Mr. T. Short's letter of August 13, 1952, and Employees' Exhibit B-1, which is a copy of Agreement of August 12, 1952, consolidating these facilities, and it will be noted Item 7 of this agreement reads:

"7. Separate rosters of Carmen, Helpers, Car Cleaners, Electricians and Helpers at Union Station Little Rock will continue to be maintained but no other separate roster will be set up in Little Rock Terminal without agreement of the signatories hereto."
(Emphasis ours.)

Although the Carrier has not digressed from its stated policy in this case, we again emphasize that the letter of May, 1940 is not a letter of agreement, and cannot afford the basis for a time claim.

The decline in passenger business and the subsequent elimination of passenger trains has made reductions and reassignment of forces necessary. The Employees by filing this claim reveal the normal reluctance to accept the necessary changes. Here the force at the Little Rock Union Depot had been reduced to the point where machinists were not employed at the Depot at the time the electrician made the Federal Inspection of the diesel units on Train No. 7 at the Depot.

The inspection required by law may be made by any qualified employees. This work has not been contracted to machinists exclusively. For this reason, the claim must be denied. Furthermore, as pointed out above, the mechanics on duty at the Depot, including the electrician, could perform the work of the machinists' craft on dates of claim since no machinists were employed at the Depot at the times the inspections were made. Rule 26, which the Employees cite, requires a denial of the claim.

All matters contained herein have been the subject matter of correspondence and/or conference.

Oral hearing is not required.

(Exhibits not reproduced.)

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.

Third party notice was served upon the President of the International Brotherhood of Electrical Workers, AFL-CIO, in accordance with the Railway Labor Act as amended, and the Rules of this Board. The United States Post Office Department has certified that the letter was received by the addressee.

Carrier did not deny the claim on the property because the Employees failed to file said claims within the time limits provided for in Rule 31 of the Agreement. The rights under said Rule 31 are procedural, and not jurisdictional. When not asserted on the property such rights are waived. The factual issue is properly before this Board for determination.

On July 24, 1964, Carrier abolished machinists' positions at the Little Rock Union Depot. Electricians on the first shift, who were retained to maintain the air conditioning and other electrical equipment, made the inspection of the diesel locomotive on Train No. 7 and signed the report required by

the Interstate Commerce Commission. This claim, filed on January 7, 1965, alleges that the Carrier arbitrarily transferred work belonging to the Machinists' Craft to the Electricians' Craft. Electricians continued to inspect the diesel locomotive on Train No. 7 until July 9, 1965, when the Carrier established a combination job which made the machinist who inspected the switch engines in the Little Rock Yard also responsible for the inspection of the diesel engine on passenger Train No. 7.

Carrier alleges, and there is no convincing evidence to the contrary, that the electricians made only normal inspection required by the Interstate Commerce Commission. Employees have failed to establish by a preponderance of evidence that mechanical work reserved to machinists, other than inspection, was performed during the period involved in this claim.

Rule 52 (a) provides that machinists' work shall include, among other things, "engine inspecting." But, inspecting of engines is not the work alone of machinists. Locomotive engineers, electricians, and employees of other crafts inspect engines to meet ICC requirements.

Similarly, Rule 26 is not inconsistent with this established practice. Rule 26(a) says:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work."

There is no probative evidence in the record that repairs or mechanical adjustments reserved to machinists were made during the period of this claim. The allegation that "beginning January 7, 1965, the Carrier assigned an electrician to perform machinists' work * * *" is a mere assertion and conclusion. It does not give the dates when the alleged work was done, what machinist work, other than ICC inspection, was actually performed by electricians, nor what specific repairs or adjustments were made.

On the basis of the record, we are obliged to conclude that there is no merit to the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1968.

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