

Award No. 5575

Docket No. 5380

2-MP-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the rules of the current agreement, Mr. T. Short's letter of May 21, 1954 and Master Mechanic J. D. Hope's letter of May 17, 1965, when it assigned an electrician to operate an overhead crane at its Kansas City Shops on December 5, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Crane Operator O. R. Travers in the amount of four (4) hours at the applicable crane operators' overtime rate for this violation.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a regular force of crane operators at Kansas City, Missouri, who hold seniority as such under Rule 25 of the Controlling Agreement. Crane Operator O. R. Travers, hereinafter referred to as the Claimant, is regularly employed as such at this point and is carried on the crane operator's seniority roster, a separate seniority division in the Craft of Electrical Workers.

On December 5, 1965, a crane operator was needed to operate the electric overhead traveling crane at Kansas City, between the hours of 4:30 P. M. to 7:45 P. M. There being no crane operator on duty at this time, General Foreman Kelly instructed Electrician C. L. Brown to operate the crane during these hours, instead of calling Claimant, who was first out for call from the crane operator's overtime board.

This dispute has been handled with all officers of the Carrier, up to and including the highest officer designated to handle such matters, with the result that all declined to settle.

The Agreement effective June 1, 1960, as subsequently amended, is controlling.

of crane operators if any are furloughed. If none are furloughed, men employed as crane operators are placed on the crane operators' seniority roster.

Having recognized the seniority rights of crane operators to be assigned to regular positions as such, the Carrier has fulfilled the requirements of the rules. Rule 25, as well as Rule 108, does not define the scope of the work of crane operators nor is it a classification of work rule. The electrician on duty operates the crane when necessary, just as he operates any power operated tool or machine in connection with his duties. If the work load is such that the regular force cannot get the work done, additional men are called on an overtime basis, including crane operators, when needed.

The Employes also cite Master Mechanic Hope's letter of May 17, 1965, which is quoted above. The letter of May 17 recognizes that electricians may operate cranes. There, the Local Chairman for the electricians agreed that an electrician could be used to operate the overhead crane without bothering to ask the furloughed crane operator if he wished to fill the vacation vacancy. The local arrangement is clear recognition of the fact that the Local Chairman did not contend that crane operators had an exclusive right to operate cranes.

The Employes also cite a letter dated May 21, 1954 written by Mr. T. Short, former Chief Personnel Officer for the Carrier. This letter sets forth the manner in which temporary vacancies may be filled. A copy of the letter is attached hereto as Carrier's Exhibit A. In reviewing the letter, your Board will note that the letter sets forth several ways in which a temporary vacancy can be filled, the fourth one being call a man from the overtime board. The letter illustrates the fact that the punitive rate for overtime hours is designed to discourage using employes on an overtime basis and that the overtime rules do not give an employe a right to be called for overtime work.

The letter, as we have stated, indicates the manner in which temporary vacancies will be filled. In the instant case, no temporary vacancy existed. No crane operator was assigned to work on the second shift. There was no position in existence on which a vacancy would occur. For that reason, the letter is not applicable. We do not have the problem in this docket of determining who may have the right to work in the place of a crane operator who is temporarily absent for any reason.

On Sunday, December 5, 1965, the date of claim, no crane operator was assigned to work on the second shift, and crane operators are not normally needed. Occasionally, the crane is needed for a short time. Journeymen electricians on duty on the weekend may be used to perform all of the work of their craft. This includes the use of electricians on duty to operate the crane if necessary. Under these circumstances, there is no violation of the Shop Craft Agreement, including the seniority rights of crane operators.

For the reasons fully stated above, this claim is entirely lacking in merit, and should be declined.

(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 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 were given due notice of hearing thereon.

This claim arises out of Carrier's assignment of an Electrician to operate the electric overhead traveling crane at its Kansas City Shops between 4:30 P. M. and 7:45 P. M. on Sunday, December 5, 1965, when a crane operator was not on duty. Petitioner contends that Carrier's failure to call claimant, who was first out for call from the crane operator overtime boards, constitutes a violation of Rules 108 and 25(c) of the applicable Agreement and that claimant is entitled to four (4) hours' compensation at the overtime rate under Rule 4(d) of the Agreement.

Carrier contends that since no crane operator was assigned to work during the second shift on the date of claim, it was proper to use an electrician on duty to operate the crane. The position of Carrier is that a journeyman electrician can be used to perform all the work of his craft when necessary, despite separate seniority rosters for various classes of Electricians. Carrier argues that Rule 25(c) of the Agreement does not obligate the Carrier to employ men in these separate classifications, nor call employes from such seniority roster to perform particular work normally performed by them at the punitive rate if journeymen electricians are on duty and available to perform such work.

The pertinent language of the Agreement is contained in Rule 25(c) and Rule 108, which, in part, provide as follows:

"SENIORITY.

Rule 25. (c) * * *

* * * * *

Craft

Seniority Division

* * * * *

Electrical Workers

Electricians
Apprentices
Electrician Helpers
Generator and Motor Attendants
Crane Operators
Traveling Electricians
(Western and Southern Districts only)
Telephone Maintainers
(Western and Southern Districts only)
Division Electricians
(Gulf District only)

* * * * *

Rule 108. Men employed as generator attendants, motor attendants (not including water service motors), and substation attendants who start, stop, oil and keep their equipment clean and change and adjust brushes for the proper running of their equipment and power and switchboard operators; operators of electric traveling cranes, capacity 40 tons and over; electric crane operators for cranes of less than 40-ton capacity."

Although the establishment of separate seniority rosters within the same craft under the applicable Agreement might not be construed as dividing the work of the Electricians' craft among various seniority classes to the degree urged by the Petitioner, some intent and purpose is apparent. Otherwise, there would be no logical reason for separate seniority rosters. It is undisputed that employes classified as crane operators at Kansas City are regularly assigned so that a crane operator is on duty seven days a week on the first shift and a crane operator is on duty Monday through Friday on the second shift. Furthermore, Carrier does not refute Petitioner's averment that a separate overtime board for crane operators is maintained at Kansas City and that over the years, crane operators have been called from said overtime board whenever crane operation was required outside of bulletin hours.

Rule 107 of the applicable Agreement is entitled, "Electrical Workers Classification of Work", and this Rule makes no reference to the operation of electrically driven cranes in describing the diversified duties of Electricians, unlike corresponding provisions of other Agreements involved in prior awards of this Division, which are relied on by Carrier. See Awards 2623 and 2654. Moreover, in the instant case, Carrier entered into a supplemental Agreement with Petitioner on May 17, 1965, relative to the use of electricians as crane operators at Kansas City when employes classified as crane operators are on vacation, which buttresses Petitioner's claim in the instant dispute in that the Carrier agreed that electricians would only be used as crane operators when employes so classified were on vacation, and that other instances would be worked out in line with the governing rules. (Union Exhibit A.)

Despite Carrier's present contention that an Electrician is the master of his trade, and may perform all of the work of his craft, including operating cranes, the record establishes that crane operators at Kansas City had customarily operated the electric overhead crane exclusively, except during periods when regularly assigned crane operators were on vacation, which situation was the subject of a separate agreement between the parties. Even though Carrier may assign other than employes classified as crane operators to operate cranes at different locations on Carrier's system where no employes separately classified as crane operators are employed, the established practice at Kansas City has been to assign the disputed work only to crane operators, except by mutual agreement between the parties. Although the particular rules relied on by Petitioner are general in nature, and do not describe the specific work to be performed by employes classified as crane operators, custom, practice, and a supplementary Agreement between the parties support the instant claim.

Petitioner seeks compensation for claimant at the punitive rate. However, time for work lost should be compensated at the pro rata rate in accord-

ance with numerous awards of the Board. Awards 4185, 3405 and others. Accordingly, the claim will be sustained as modified herein.

AWARD

Claim is sustained as modified by the Findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.