

Award No. 6044

Docket No. 5874

2-WT-MA-'70

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinists W. T. Reddington and J. W. Gross were each unjustly deprived of four (4) hours work each on October 31, 1968 and W. T. Reddington and F. C. Davis were each unjustly deprived of six (6) hours work each on November 1, 1968.

2. That accordingly the Carrier be ordered to compensate the aforesaid machinists for four (4) hours each on October 31, 1968 and six (6) hours each on November 1, 1968.

EMPLOYEES' STATEMENT OF FACTS: Machinists W. T. Reddington, J. W. Gross and F. C. Davis hereinafter referred to as the claimants are employes of The Washington Terminal Company hereinafter referred to as the carrier, at its Ivy City Shops in Washington, D. C.

On Thursday, October 31 and November 1, 1968, the foreman at Ivy City Shop assigned Electricians W. T. Frank and A. D. Hawes to perform machinist work on Store House fork lift. The work consisted of renewing and adjusting control linkage on this fork lift.

Mechanical work on this as well as all other machinery, locomotives, cranes, motors, and tractors has for many years been performed by the machinist craft at Ivy City Shops.

There is no dispute between the two crafts in this claim. It can be truthfully said that the electricians at Ivy City, which includes the local chairman, Electrician William P. Frank, who is also President of the International Brotherhood of Electrical Workers Local Lodge #362 places no claim on the work in question, and did in fact alert the machinists at the time that he as well as Electrician A. D. Hawes had been assigned to perform machinist work on the above fork lift. The machinist local chairman on

where the storehouse forklift is located, and thus was not in any position to know whether, as he professed, machinists "... always renewed, repaired and adjusted the control linkage on the Store House Fork Lift. . . ." The fact, as he says, that his performance of the task was a "new experience" for him, in no way refutes the fact that the same task was performed by many other electricians over the years.

(b) The April 8, 1969 statement of Machinist James J. Pesagno, Jr., merely suggests that the author (who resigned April 9, 1964) did at some uncertain and unspecified time "... maintain the electric fork lift." What forklift this may have been is not even mentioned. The fact that he may have maintained some electric forklift does mean that only members of his craft performed the task in question.

(c) The February 13, 1969 statement of Machinist Bernard Martin merely described what Martin says he performed on the storehouse forklift on claim dates. This statement has no bearing on the issue of exclusive rights.

(d) The December 31, 1969 statement of the Electrician's General Chairman S. A. Lloyd disclaiming for his craft "... any of the work associated with the control linkage" cannot, and does not, vest in the machinists any exclusive rights to perform this task. Lloyd did not say, and never has said, that electricians have not performed the work in question. The fact that the electrician's general chairman may now disclaim the performance of the task does not create in itself in the machinists' craft exclusive rights thereto. Such exclusive work rights, which do not now and have never existed, are not created merely by two general chairmen arrogantly deciding at their own whim to "divvy" up work between members of their organizations. Creation of an exclusive right to perform work is a matter for negotiation with the carrier, which has not refused to talk about the matter. Such work rights' barriers, which haven't been erected either by rule or practice, should not, and cannot be created by means of board award.

In view of the foregoing, the petitioning organization's failure to allege, much less prove, the essential element of the claim, namely, exclusive past practice supporting its position, the claim 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.

On October 31 and November 1, 1968, Carrier's foreman at its Ivy City Shop assigned two Electricians to renew and adjust control linkage on the Store House fork lift. The Organization alleges that this mechanical work as well as all other mechanical work on machinery, locomotives, cranes, motors and tractors has for many years been performed by the Machinist Craft at Ivy City Shop and that the work in question is covered in the scope of the Machinist Classification of Work Rule #46; that there was no lack of skilled machinists to handle this work; and that these Claimants were later assigned to complete the unfinished work of the Electricians in the renewing and adjusting the control linkage on this fork lift. The Organization also relies on Rule 27 to support this claim. Carrier maintains that the involved work is not exclusive to either Machinists or Electricians and that the performance of the work involved has never, on this property, been vested exclusively in the Machinist Craft, but to the contrary, past practice supports Carrier's allegation that this work has been performed by Electricians.

The determination of this dispute has required a careful examination of Rules 46 (Machinists' Classification of Work Rule) and 62 (Electricians' Classification of Work Rule). This Board finds that the above mentioned rules (Rules 46 and 62) are general in nature, and, therefore, requires proof of exclusivity of the involved work by past practice, custom and tradition on this property. There has been some probative evidence included in the record on behalf of the Claimants showing that the involved work was the exclusive work of the Machinists by Employee's Exhibits A, B and E. However, this evidence was successfully rebutted by Carrier's Exhibit I-1, which would definitely show, to the contrary, that the involved work was usually performed by Employees of the Electricians Craft.

It is fundamental that the burden of proving a claim rests upon the Organization. It is true that the Organization, in this instance, presented a prima facie case, which, if not rebutted, would have been sufficient to require a sustaining award. However, as above stated, the prima facie case of the Organization was successfully rebutted in that the preponderance of the evidence shows that on this property, the involved work of renewing linkage on a fork lift is not the exclusive work of Machinists or Electricians; that Carrier acted properly when it used Employees of both the Machinists and Electricians Craft to perform this work; and that the contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.