Award No. 6242
Docket No. 6104
2-MP-EW-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the rules of the current Agreement when they assigned Oliver Lewis, Material Handler, to perform work that prior to the date of this claim had been performed and recognized as crane operator's work.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate crane operator O. R. Travers in the amount of eight (8) hours at the rate of time and one-half at the applicable crane operator's over-time rate for this violation.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a regular crane operator at Kansas City, Missouri. Crane Operator O. R. Travers, hereinafter referred to as the claimant, is regular assigned Monday through Friday, 8:00 A.M. to 4:00 P.M., rest days Saturday and Sunday. He is carried on the crane operator's seniority roster, a separate seniority division.

On December 5, 1965, a claim was filed at Kansas City, Missouri, for electricians performing crane operator's work. The Adjustment Board sustained this claim, Award No. 5575. Since the filing of this claim in 1965, the carrier has furloughed two (2) crane operators, leaving only the one crane operator to perform work that prior to December 5, 1965, three crane operators performed, and the carrier has continually transferred work that had previously been recognized as crane operators' work to other crafts.

On Thursday, September 1, 1969, unit 300 came into the shop for the removal and installation of the No. 2 engine cooling fan, work that prior to the furloughing of these two (2) crane operators, had been performed by the crane operators, after the electricians had removed the holding nuts, but on September 1, 1969, the carrier instructed Oliver Lewis, Material Handler, to come into the shop and remove the cooling fan with a fork

vice. For this reason, we find no basis under the Agreement for the claim, and it should be declined.

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.

Simply stated, the Petitioner Organization seeks to establish that removal of fans from diesel engines is the exclusive duty of the overhead crane operator employed at the Kansas City, Missouri, facility of the Respondent Carrier. The basis of this claim is in an alleged past practice.

September 1, 1969, was the Labor Day Holiday. The duly classified crane operator, O. R. Travers, was "off" on his holiday. A diesel locomotive was brought into the Kansas City shop for removal of a defective fan, located on the roof of the equipment, and installation of another fan in its place.

Two electricians, who were on duty that day, made the necessary disconnections, and lifted the defective fan from its position on the locomotive, to the rear roof of the equipment. A store room employe brought the replacement fan to the place in the shop where the diesel locomotive was located, on a fork lift truck. With his fork lift, he lifted the fan to a position to enable the electricians to put it in place on the locomotive. He then, with the fork lift, took the defective fan off the roof of the locomotive and drove to the storeroom with it.

The Petitioner Organization seeks eight hours' pay for claimant because he was not called in to operate an overhead crane to remove the defective fan after its moorings had been loosened and to lift the replacement fan into position for the electricians to secure on the locomotive.

The Controlling Agreement makes no reference to the removal and installation of fans on diesel locomotives. It appears that when convenient, the Carrier found it practicable to use the overhead crane to perform this work. However, it is quite apparent that this work could just as readily be done by other Electrical Worker–Helpers. Two rules of the Agreement set forth the following:

"GENERATOR ATTENDANTS, CRANE OPERATORS:

> Rule 108. Men employed as generator attendants, motor attendants (not including water service motors), and substation attendants to 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.

ELECTRICAL WORKER HELPERS:

Rule 109. Employes regularly assigned as helpers to assist electrical workers and apprentices, electric lamp trimmers, the washers and cleaners of primary and storage batteries, operators of portable cranes, shall be known as Electrical Worker Helpers."

The management has the right to determine the means by which a particular job will be done. The electricians on duty that day physically removed the defective fan from its position on the locomotive. The Petitioner cannot, under the Agreement, claim that non-unit employes performed this function. They physically moved the replacement fan into position. Again, the Petitioner cannot complain that non-unit employes performed a function to which its members were entitled. Nor does it contend that an employe in its unit should have brought the replacement fan to the site of the repair or such employe have taken the defective fan away from the site. In essence, the Organization is demanding that the Crane operator should have been called in for a day's work at premium pay, it being a holiday, to take the defective fan off the roof of the locomotive roof where it had been placed by the electricians, drop it to the floor of the shop for the Material Handler to haul away with a fork lift and lift the replacement fan properly brought to the site by the Material Handler on his fork-lift, to the position where the electricians could set it in place. At best, this Board believes the transaction would have required approximately fifteen (15) minutes of work by the crane operator.

The Agreement between the parties does not require the Carrier to utilize crane operators exclusively to remove and replace fans. In fact, Rules 108 and 109 would afford the Carrier the right to utilize any of a number of employes in the unit covered by the Petitioner to operate a variety of means to accomplish this work. The Agreement is controlling, albeit the Carrier, for convenience, when a crane operator was on duty, tended to utilize the crane to perform this work. This did not restrict or limit it. Electricians did everything except lift up the replacement fan and remove the defective one. This takes on the character of a de minimus invasion, if in fact an invasion of jurisdiction could be held to have occurred.

As we stated in Award No. 5577 (Ives): "* * * the Petitioner has the burden of establishing through competent evidence that the disputed work * * * has been historically and customarily performed * * *" by the crane operator, "to the exclusion of all others." This was not done.

Nothing in the Agreement precludes the Carrier from using means other than a crane to replace fans. No crane was used and, therefore, claimant cannot assert that he should have been called in to perform the work and be paid premium pay for eight hours.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.

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