

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rule 26(a), 52 (a), and Letter of Understanding of May 1, 1940, when they arbitrarily transferred the work of building a coupler straightener machine located at Pike Avenue Shop, North Little Rock, Arkansas, from the Machinists' Craft to the Boilermakers' Craft.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist H. Sheeks in the amount of eight (8) hours at the pro rata rate of Machinist Welder, beginning with October 13, 1971, and continuing twenty-three (23) days, as Machinist H. Sheeks was available to perform this work coming within the classification of Machinists.

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.

This is a scope or work jurisdiction dispute in which the Boilermakers and Blacksmiths have a third party interest. The dispute arose out of the assignment by the Carrier to Boilermaker and Blacksmith forces of work consisting of the cutting, shaping, forming and welding of sheet steel and angle iron or "I" beams to form the frame or body of a coupler straightener. The work of precision drilling and application of the air cylinder and hydraulic equipment to the coupler straightener was performed by the Machinists.

Freight car couplers become twisted and bent while in service due to forces generated by slack action. The couplers are restored to proper length and straightened by heating them red hot and placing them in a coupler straightening machine where hydraulic arms generate forces up to 7500 psi and restore them to their original shape. Such a coupler straightener was in operation and used by Carrier at the Car Shops of the Texas and Pacific Railway Company, a subsidiary of Carrier herein. The record discloses that this coupler straightener at Marshall, Texas had been constructed under the following work allocation: Boilermakers cut, shaped, formed, and welded the frame; Machinists did the precision drilling and attached hydraulic equipment; and Sheet Metal Workers attached necessary piping.

On April 1, 1971 the Car Shops at Marshall, Texas burned to the ground. Among the equipment which could not be salvaged was the coupler straightener described supra. Following the fire, Carrier transferred its coupler reclamation facilities to its North Little Rock, Arkansas shops. A new coupler straightener was required to replace that destroyed in the Marshall, Texas fire for operation at North Little Rock. Accordingly, on October 13, 1971, Carrier directed its machine shop forces at North Little Rock to construct such a straightener, under the same work allocation plan which had been used at Marshall, Texas.

On December 3, 1971, Petitioner filed the instant claim on behalf of Machinist Welder H. Sheeks, claimant herein, on the grounds that Carrier violated the Agreement, particularly Rule 52(a), by assigning the construction of the coupler straightener frame to Boilermaker forces. Carrier denied the claim essentially on the ground that Rule 62 of the Agreement places the work in question within the jurisdiction of the Boilermakers. The claim was not resolved on the property and comes now to us for disposition.

Petitioner herein points out that in 1971 a coupler positioner was constructed at the North Little Rock Shops by the Machinist craft. The work there involved was basically similar to the construction of a coupler straightener, i.e. drilling, bolting and welding (Emphasis added). Accordingly, the Machinists argue that past practice at North Little Rock favors their position. Moreover, the Petitioner asserts that even if this were not so, the clear, unambiguous express language of Rule 52(a) places the construction of all shop machinery within the Machinist jurisdiction alone.

The Boilermakers as third party herein contend that the construction of the coupler straightener at the Marshall, Texas Shops of the T&P constitutes binding precedent for the allocation of the work herein to its craft. In addition, the Boilermakers insist that Rule 62(a) of the Agreement places the work exclusively within its jurisdiction.

Finally, the Boilermakers assert that the Machinists claim is not properly before our Board because Petitioner allegedly did not "comply with the terms of the controlling agreement or understanding." This latter procedural objection refers apparently to Petitioner's failure to obtain a "clearance" from the Boilermakers craft to process the instant jurisdictional dispute.

Carrier in effect, denies the applicability of past practice to the instant dispute, on the ground that only one coupler straightener previously had been built. Moreover, Carrier specifically urges that the coupler positioner is distinguishable from the instant coupler straightener because of weight, size and tensile strength of the metals involved and on the basis of the functions performed by the respective machines (Emphasis added). Accordingly, Carrier relies primarily upon the express Agreement language and contends that it clearly confers the coupler straightener frame construction upon the Boilermakers and that Carrier properly assigned the work to that craft.

We turn first to the procedural objection raised by the Boilermakers challenging the propriety of the instant claim absent a "clearance" to file same with our Board. Little evidence was adduced on the record to support the Boilermaker's plea of a procedural ban. We have scrutinized the controlling Agreement and can find there no express provision or understanding relating to the handling of such jurisdictional disputes. Absent such express requirements we can only conclude that any past deference to one another's work claims was a matter of comity among the Organizations and is not binding upon the Organizations in the instant claim. Accordingly, we find no objection to our entertaining and deciding this case.

Upon careful analysis of the record before us we find that past practice in regard to the construction of this type of machinery has not been uniform, mutual, or consistent nor of sufficient duration to support an inference as to the parties intent. Moreover, we need turn to past practice only where the Agreement provision in dispute is silent or ambiguous as to the meaning to be given disputed language. Such is not the case in this dispute.

The Machinists' Classification of Work Rule 52(a) reads in pertinent part as follows:

"MACHINISTS' CLASSIFICATION OF WORK-RULE 52.

(a) Machinists' work, including regular and helper apprentices, shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling (see Note A) and installing machinery, locomotives and engines (operated by steam or other power), engine inspecting; pumps, engine jacks, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery ***."

The Boilermakers' Classification of Work Rule 62(a) reads in pertinent part as follows:

"I-beams, channel iron, angle iron and T-iron....
in connection with boilermaker's work."

Careful reading of the foregoing language indicates that the express provisions of Rule 52(a) described as machinists' work "the laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building and assembling ... machinery ... pneumatic and hydraulic tools and machinery ... and other shop machinery" It is noted that no express qualification or limitation on the size or gauge of metal is contained therein. On the other hand, the language of Rule 62(a) encompasses "I-beams, channel iron, angle iron and T-iron ... in connection with Boilermaker's work....", i.e. such material may be worked by Boilermakers on condition that it is used in Boilermakers' work.

Consistent with the foregoing express language we find that the work of building the frame for the coupler straightener, a piece of hydraulic shop machinery; was Machinists' work under the Agreement. Accordingly, assignment of this work to the Boilermakers' craft by Carrier constituted a violation of Rule 52(a). We shall sustain Part 1 of the claim as to said violation.

The uncontroverted record indicates that Claimant H. Sheeks worked regularly on the first shift at all times material to the instant claim and accordingly has demonstrated no monetary damages as a result of the violation of Rule 52(a) supra. Consequently we shall deny Part 2 of the claim.

A W A R D

Part 1 of the claim is sustained.

Part 2 of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1974.