

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6958
Docket No. 6800-T
2-C&NW-MA-'75

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, District No. 3 -
(A. F. of L.
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

- A. On September 27, 1973 a Helper's Job No. 182 was abolished by Bulletin No. 472. The duties of Job 182 was for a Machinist Helper to operate and lubricate shop fork lift truck and other assigned duties. The fork lift is still being used every day by other crafts in violation of Machinist Helpers' Rule #63.
- B. Request that Machinists' Helper Wetherbee be reassigned to his former Job #182, and that the company pay R. M. Schmitt, Machinists' Helper, 8 hours at rate and one-half for being available for service and not called. This being a continuous time claim until such time as J. Wetherbee or Job #182 is assigned to Machinists' Helpers, that claimants named in Exhibits 12, 13, 14 and 15 be compensated accordingly.

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 dispute involves a jurisdictional matter and the parties in interest include not only Petitioner and Carrier but three additional Organizations, two of which, upon due notice, elected to file submissions and rebuttals.

The factual background is quite clear, and undisputed in large part. Prior to 1973 fork lift trucks were used at Carrier's Oelwein, Iowa facility and were operated by various crafts, including Petitioner, employees represented by the Firemen and Oilers and employees represented by the Carmen's Organization. On August 16, 1973 Carrier posted a bulletin advertising as Job No.

182 a position of Machinist Helper with the duties of: "Operation and lubrication maintenance of Shop Fork Truck and other assigned duties." The position was filled by Claimant herein. By bulletin and effective September 27, 1973 the position (Job No. 182) was abolished and the work of operating the fork lift truck reverted to the various crafts who had driven it prior to August 16, 1973. It is noted that the original creation of Job No. 182 coincided with the acquisition of a new fork lift truck at Oelwein. Carrier asserts in its submission, but not on the property, that the creation of Job No. 182 was an experiment which was unsuccessful. The Firemen and Oilers Organization assert that immediately upon posting of the bulletin creating the job on August 16th their Local Chairman had protested verbally that it constituted an improper assignment of a Machinist Helper to work which had always been Shop Laborer's work at Oelwein. No evidence was produced in support of this claim and no written grievance was filed. Also it is noted that Carrier did not verify the alleged protest, and also does not deny it. The Firemen and Oilers claim that as a result of their protest the position was abolished forty days later. Carrier asserts that various organizations, including the Machinists, Firemen and Oilers, the Carmen, B.R.A.C. the Sheet Metal Workers and the Electrical Workers had employees under their Agreements operate fork lift trucks at this and other locations on the Carrier's properties. Both the Firemen and Oilers and the Carmen presented evidence that employees coming under their Agreements operated and maintained fork lift trucks at various other locations. Those facts were not denied by Petitioner, who merely denied that either Organization had established an exclusive right to operate such equipment.

Petitioner relies principally on Rule 63 of the Agreement in support of its position. That rule provides:

"Helper's work shall consist of helping machinists and apprentices, operators of car brass boring machines, drill presses (plain drilling) and bolt threaders not equipped with a facing, boring or turning head or milling apparatus, wheel presses (on car, engine truck, and tender wheels), nut tappers and facers, bolt pointing and centering machines, crane men helpers on locomotive and car work, tending tool room, machinery and locomotive oiling, box packing and grease cup filling; applying all couplings between engines and tenders; locomotive tender and draft rigging work except when performed by carmen, and all other work generally recognized as helpers' work."

The Firemen and Oilers, in addition to alleged custom and practice both at Oelwein and other locations refer to Appendix A of their controlling Agreement, where by Agreement of December 3, 1970 various job classes were established; under Class 3, Fork lift operators are specifically listed.

The Carrier as well as the Firemen and Oilers and the Carmen all raise a jurisdictional issue. They refer to an Agreement dated February 27, 1940 which purports to establish a method for resolution of jurisdictional disputes. It is claimed that the Machinists have not exhausted their remedies under that Agreement and hence this Claim should be dismissed. It is noted that the Petitioner vigorously disagrees with that position and asserts that the 1940 Agreement was not operative after January 1, 1953, the effective date of the currently revised Agreement. Petitioner points out that the Jurisdictional Dispute Agreement was not incorporated in the current Agreement since it was no longer operative and furthermore the current Agreement specifically contains language indicating that it contained the entire Agreement. We find Petitioner's position well taken as there is no evidence that the jurisdictional settlement process and understanding is currently in effect; we shall deny the request that the claim be dismissed.

Petitioner has repeatedly pointed to the phrase "machinery and locomotive oiling" from Rule 63 as the basis for their claim to the work herein. This has been related to the phrase "lubrication maintenance" in the job advertisement for the position. However, no evidence was produced on the property which supported any violation of Rule 63 in this regard. More importantly, Petitioner claimed that laborers operating fork lift trucks after September 27, 1973 were acting as helpers in assisting machinist mechanics. Again, there is no evidence or even specification as to the basis for this allegation.

For the Machinists to prevail in this dispute they must demonstrate that by rule or practice they have the exclusive right to the work in question: the operation of the fork lift truck at Oelwein. The evidence which was presented indicates that at least at numerous other points on the Carrier's property, several Organizations have traditionally, over many years, operated fork lift trucks. Further, Petitioner admitted in its rebuttal statement to Carrier's submission that at Oelwein, prior to August 1973 the fork lift truck was operated at times by its members and at times by laborers represented by the Firemen and Oilers. Rule 63 does not support the employees claim for the work in question, since it does not mention fork lift trucks or work. Since there is neither rule nor practice to establish Claimant's exclusive right to the work in question, the Claim must be denied. It should be noted that by this determination we are not making any finding that any other Organization has exclusive right to the fork lift work.

A W A R D

Claim denied.

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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 31st day of October, 1975.