Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7378
SECOND DIVISION Docket No. 7305-T
2-N&W-MA-'77

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. Carrier violated the controlling Agreement, Rules 31 and 54, but not limited thereto, when on the dates of January 6, 1975, first shift, 7:00 a.m. to 3:30 p.m., January 7, 1975, first shift, 7:00 a.m. to 3:30 p.m., January 8, 1975, first shift, 7:00 a.m. to 3:30 p.m., January 9, 1975, first shift, 7:00 a.m. to 3:30 p.m., January 10, 1975, first shift, 7:00 a.m. to 3:30 p.m., five (5) Carmen, R. M. Rice, F. W. Robinson, Jr., S. R. Worrell, R. F. Crawford and W. L. Austin, each worked eight (8) hours on the aforementioned dates, performing work of the Machinist Craft for a total of two hundred (200) hours at the Foundry.

2. That accordingly, the Norfolk and Western Railway Company be ordered to additionally compensate Machinists B. M. Murray, H. C. Waldron, Jr., C. T. Price, Jr., D. G. McCormick, D. L. King, W. C. Shelton, H. L. Simmons, Jr., C. R. Collins, J. H. Reich and F. O. Hogan in the amount of twenty (20) hours each at the pro rata rate of pay.

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.

The Organization asserts that on the dates of January 6-10, 1975, Carmen were improperly assigned to the installation of a sand hopper, the installation and alignment of a No Bake device directly underneath, and the installation of three shake down boxes, all of which had to be tied in with installing some 200 feet of conveyors in the Foundry at the Carrier's Roanoke Shops.

A more detailed statement of the work involved was submitted by the Carrier:

> "The fixtures referenced were a Hopper-Mixture and Roller Loop Conveyor. The Hopper-Mixer is a totally purchased item which was lifted and set in place by an overhead crane. A dogging plate 3/8" x 6" x 6" metal was cut out by torch, then welded to each of four (4) hopper legs; one dogging plate 3/8" x 12" x 24" was cut by torch then welded to the mixer. Holes were then burned by torch in the Hopper and Mixer mounting plates and dogging plates to accommodate a total of 16 bolts. Holes were drilled in the floor and bolts set in concrete by brickmasons. Instllation was then completed by placing nuts on the sixteen (16) bolts.
>
> The Roller Loop Conveyor is approximately one-hundred (100) feet of conveyor forming a square around the Hopper-Mixer. It also was a purchased item including mounting legs; however, Welder-Carmen did fabricate four (4) mounting legs and two cross-braces from 3/16" x 3" x 3" angle irons in lengths of 15-3/4" and 36" respectively, to support additional sections of rollers. Dogging plates were cut by torch from 3/8" metal, a hole burned through each one, then they were welded to conveyor legs. Brickmasons then drilled holes in concrete floor and set bolts in concrete. Installation was then completed by placing nuts on the forty-eight (48) bolts."

The basis of the Petitioner's claim is that the Carrier erroneously assigned to Carmen the work of setting and rearranging roller beds for sand distributors and setting a hopper collector and (celecta F10 1000) distributor. Such work, it is alleged, falls within the category of "assembling and alignment of shop machinery" which is covered by the Machinists' Work Classification Rule 54. Petitioner maintains that work within the Machinist classification on shop machinery is reserved to Repair Gang Machinists at Roanoke, whether in the Foundry, Car Shop, Machine Shop or Blacksmith Shop, "by long established practice and agreement."

Petitioner also asserts that assignment to the Carmen of the work in dispute also violates Rule 31 of the Agreement, which states in part that:

> "None but mechanics, apprentices and hourly rated gang leaders shall do mechanic's work as per special rules of each craft."

The Carrier's assignment of the work was clearly in error, Petitioner states, since the Carmen's Classification of Work Rule contains no reference to tools and machinery and other shop machinery or tool and die making.

The Carrier urges denial of the claim for the following reasons:

The work at issue is not within the Machinists' Classification of Work Rule 54 nor has it been performed exclusively by members of that craft. Hoppers and conveyors are fixtures, not mechanized, nor pneumatic and hydraulic tools and machinery and other shop machinery as in Rule 54.

The hoppers and conveyors involved in this dispute, Carrier adds, were purchased prefabricated equipment or fixtures; their mounting and installation has frequently been performed by other crafts and other Departments at Roanoke and elsewhere, not denied by Petitioner. In support of its statement, Carrier submits an affidavit by its Supervisor Dies, Jigs and Fixtures listing seven car program changeovers dating back to 1966 and asserting that carmen and welder-carmen have installed and removed this same type of roller conveyor and similar fixtures or pieces of equipment that come under the heading of dies, jigs, and fixtures in the Car Department.

Even if machinists may have performed similar work in the past, as Petitioner claims, this does not constitute exclusive jurisdiction over such work and the Organization may not claim exclusive rights to such work. Absent a craft's exclusive right to perform certain work, management retains the right to assign the work to various classes or crafts. Certainly, Carrier argues, burning, welding, and setting of bolts in concrete performed in connection with the disputed work by the welders (Carmen) and brickmasons is not work belonging exclusively to machinists.

Petitioner has not raised a challenge concerning the work in dispute until the instant claim, even though such work has been performed prior to and during the term of the current Agreement, which dates from 1949. Carrier therefore holds, citing precedent Board Awards, that performance of the work by Carmen not abrogated or changed by the current Agreement constitutes a practice which has the same effect as if it were an Agreement provision. (See Third Division Awards 5747 (Wenke), 4086 (Parker), 4493 (Carter), and 2436).

The Carrier also holds that no basis exists for a monetary claim, since neither the named claimants nor any other machinist lost time.

The Carrier and the Carmen dispute the Machinists on the number of individuals and number of days on which the disputed work was performed. The record includes signed affidavits from three of the named carmen that they did not perform any of the disputed work.

The Railway Carmen, as a party in interest, filed a statement supporting the Carrier's claim that carmen have installed and removed roller conveyors and similar pieces of equipment. Carmen also submitted copies of job postings for welder-carmen in the Freight Car Shop to do general work including work on jigs, dies and fixtures. (The Referee notes that one of these job bulletins is dated before, and the others after, the dates when the work giving rise to this dispute was performed.)

The positions bulletined to the Carmen craft, referred to above, surfaced another area of disagreement between Machinists and Carrier. Machinists maintain that Foundry welder jobs are bulletined to mechanics in the Locomotive Department, never to Carmen. The Carrier holds that the Foundry, where the disputed work was done, is part of the Car Department and that welder jobs there are bulletined to Carmen. None of the machinists claimants have bulletined positions in the Foundry, according to the Carrier.

This Board, following long-established principle, will not attempt to resolve these conflicting statements. In any event, job postings or bulletins are not necessarily determinative of the assignment of work, unless so vested by specific language of the Agreement.

The record does disclose that the work in dispute has been performed by employees of other than the Machinists' craft. Petitioner has offered no evidence to the contrary. Indeed, this is borne out in an affidavit submitted by the General Chairman of the Sheet Metal Workers, which states:

> "For over 50 years the work of installing and repairing of shop machinery and related equipment has been performed by the employees of the Machinist, Electrical Workers and Sheet Metal Worker Crafts. They have performed their work as per their Classification of Work Rules in all Departments of Roanoke Shops. The jobs have been so bulletined and assigned with a repair gang designation."

There is no necessity to cite prior Awards for this Board's repeated decisions that absent a clear and unambiguous rule, past practice governs.

The key issue, therefore, is whether the Machinists' Classification of Work Rule unambiguously covers the work in question, so as to be determinative of Machinist jurisdiction. As indicated by the detailed statement of the work involved, what was primarily involved was the cutting by torch of dogging plates and welding them to the legs of the Hopper-Mixer and to the Roller Loop Conveyor, respectively; cutting holes by torch in the Hopper-Mixer mounting plates; and then bolting the plates to the floor. The Welder-Carmen also fabricated four mounting legs and two cross braces to support additional sections of rollers.

We do not find support for the claim in the rules cited by the Petitioner. We find the work involved is not, under the terms of the Agreement, work belonging exclusively to members of the Machinists' craft. Petitioner has offered no evidence to the contrary that the disputed work has been performed by other than machinists. Indeed, the evidence is clear that other crafts, specifically Carmen, have historically performed identical work.

There is ample precedent, in rulings by this Board, that in the absence of an express assignment of work by a specific rule or provision of an agreement, past practice is critical in any determination as to whether that work, within the confines of the agreement, belongs exclusively to a particular craft.

Evidence with respect to past practice in assigning the work involved in this case does not support Petitioner's claim. The evidence offered by the claimants does not support their right to perform the work exclusively by past practice. Petitioner has failed to establish that the work in question was reserved solely to machinists, or that it belongs to or has been performed exclusively by machinists in the past.

We fail to find violation of any agreement rule.

Accordingly, the Board rules the claim must be denied.

A W A R D

Parts 1 and 2 of Claim 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 14th day of October, 1977.