

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 Employes:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rules 26(a) and 52(a), when they arbitrarily assigned Sheet Metal Workers and Carmen to loosen a clevis from a boom, cut off the defective cable, and reapply the large hook to the boom on wrecker X-250 on November 19, 1975.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist T. E. Burke in the amount of four (4) hours' pay at the punitive rate of pay for a Machinist for November 19, 1975, when he was denied the right to perform the above-mentioned work on wrecker X-250.

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 March 15, 1975 it was necessary to repair 2 clevises on the X-250 Wrecker at Carrier's North Little Rock Rip Track. Specifically it was necessary to loosen the clevises from the boom, one on the cable to the large hook and one on the cable to the small hook, cut off the defective cable, and reapply the hooks. Claimant was employed that date as a "roving" Machinist at the Ramp but was also available for service on the Rip Track. At approximately 12:30 p.m., Claimant's Foreman told him to report to the Rip Track and perform "machinist's work" on the X-250 repairs. It is essentially unrefuted on our record that as a matter of long practice, Machinists had worked with Sheet Metal Workers in a division of labor to effectuate repairs to cable on the Wrecker. Specifically, it is unrefuted that Machinists removed the clevis from the boom and cut off defective cable, Sheet Metal Workers secured the clevis to the sound cable with molten zinc, and Machinists reattached the clevis to the boom.

Upon reporting to the Rip Track as directed, Claimant discovered that two Sheet Metal Workers and a Carman had been assigned to the repairs by another Foreman and had virtually completed the repairs. Claimant performed the remaining work of attaching the intermediate hook and subsequently filed the instant claim alleging a violation of Rules 26(a) and 52(a).

Carrier defended against the claim by asserting inter alia that Note A to Rule 52 is express authority for assigning any "mechanic" it deems fit to perform the work at issue. We reject this construction of the contract language. Even the most cursory reading of Note A would convince any objective reviewer that the references to "mechanic" there concerns the Machinists' craft.

The Organization suggests that both clear and express language of Rule 52(a), as well as custom, practice and tradition support the claim.

For its part, the Carmen Organization filed a Third Party Submission which essentially argues that the Machinists have not proven exclusive reservation either by express language or by convincing evidence of exclusive practice. Additionally, the Carmen assert that the work in question was permissibly done under the so-called Incidental Work Rule, Article III, of the Agreement of April 24, 1970.

Taking last things first, we are not persuaded that the Incidental Work Rule has any application whatsoever in this case. Additionally that argument was raised de novo before this Board and must be rejected on that score in any event.

We are unable to find an express reservation of the work to Machinists in the very words of the Rule 52(a). But we are persuaded that the work performed by the Carmen, to wit: removing the clevis, cutting the cable and reapplying the hook, has historically been performed by Machinists. Belated assertions regarding exclusivity and system-wide application by the Carrier are both unsupported by evidence and raised de novo before this Board.

Based upon all of the foregoing we shall sustain Part 1 of the claim. Part 2 claims 4 hours at the punitive rate as compensatory damages for Claimant. The record before us does not support more than 1 hour and 30 minutes at the straight time rate. Accordingly we sustain Part 2 only to that extent.

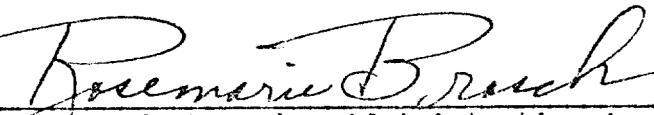
A W A R D

Part 1 of the claim is sustained.

Part 2 of the claim is sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of May, 1979.