

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
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company, hereinafter referred to as the Carrier, violated the applicable provisions of the current agreement when on February 1, 2, 3, and 4, 1977 it improperly assigned other than classified Machinist employes, namely Boilermakers, to the work of repairing and welding the damaged rear draw bar pocket on Alco locomotive No. 6724, at the Green Bay, Wisconsin Enginehouse.
2. That accordingly the Carrier be ordered to compensate Machinists L. Zittle and L. Derricks in the amount of eight (8) hours pay each, at the time and one-half rate, for the above work which was performed on February 1, 1977; Machinist P. Reynolds eight (8) hours pay at time and one-half rate, for the above work which was performed on February 2, 1977; Machinist D. Tomcheck eight (8) hours pay, at time and one-half rate, for the above work which was performed on February 3, 1977; and Machinist E. Dudek eight (8) hours pay, at time and one-half rate, for the above work which was performed on February 4, 1977.

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.

Rule 62 describes Machinists' work as consisting of "laying out, fitting, adjusting, shaping, ... of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines ... and electric welding on work generally recognized as machinists' work; ...".

The issue giving rise to the claim is that Carrier improperly assigned Boilermakers "to the work of repairing and welding the damaged rear draw bar pocket on Alco locomotive...", at Carrier's Green Bay, Wisconsin facility.

The Boilermakers' Organization, as interested Third Party, filed a submission, after due notice.

Petitioner relies on the Machinists' Classification of Work Rule 62; on tradition, custom and practice of long standing; and on the assertion that machinists have performed and do perform such work at other Carrier Shops. In support, Petitioner submitted statements by machinists at other Carrier locations to the effect they had worked on "draft gear pockets", "coupler pockets", "draft gear components", and "draft gear housings". Petitioner also submitted bid postings in 1955 at Carrier's Chicago Shops for Machinists and Machinist Helpers to repair "draw bars and draft gears".

Petitioner asserts that draft gear or draw bar pockets "are made up of fabricated plates welded together and affixed to the locomotive frame by the welding process; thus the pockets are not and cannot be considered an integral part of the frame casting itself". (Underlining in original). In the instant case, it adds, the pocket was not removed but the work "did involve a significant amount of heating by torch, straightening, and rebuilding".

Petitioner contends that under Rule 62, metal work and the associated laying out, fitting, adjusting, shaping, boring, slotting, milling and the grinding of same when used in building, assembling and maintaining locomotives is considered to be Machinist work, as well as the incidental welding attached thereto.

Petitioner considers the draw bar pocket synonymous with couplers by citing Rule 63, which describes Machinist Helpers' work as including, among other duties, "applying all couplings between engines and tenders; locomotive tender and draft rigging work, ...".

Petitioner also denies that the instant case is a jurisdictional dispute, as stated by Carrier's highest official designated to handle such matters, but is nothing more than a "wrongful assignment of work", which prevails at this location only, among all other Carrier Shops. Petitioner maintains that Machinists perform the work in dispute at all other Carrier Shop locations, except at the one involved herein, Green Bay, Wis.

Carrier describes a draw bar pocket, also known as a draw gear pocket, as "a box-like structure into which the draw bar is inscribed". It asserts that the Machinists do not have an exclusive right to work on draw bar pockets and that no proof of exclusivity has been shown. It further asserts that following settlements in 1947 of jurisdictional disputes between the Machinists and the Blacksmiths (which subsequently merged with the Boilermakers), Boilermakers were used to perform all draw bar pocket repairs at the Green Bay Shop.

In 1972, Carrier states, a new Shop Superintendent agreed with the Machinist General Chairman that Machinists were to perform the repairs from normal inspections, with Boilermakers continuing to repair draw bar pockets damaged as a result of collision or derailment. Carrier points out that the new Superintendent had no authority to make agreements with any Organization on Carrier's behalf.

Carrier further argues that on February 12, 1940, the General Chairmen (other than the International Brotherhood of Electrical Workers) notified Carrier that they had reached an agreement that all disputes between them involving jurisdiction of work would be settled between the Unions and that the Carrier would then be asked to accept the settlement. Carrier replied on February 27, 1940 that "we will not recognize individual requests from any general chairman, representative, or member of any one of the organizations listed..., to take work from one craft and give it to another craft". Additional jurisdictional dispute settlements were reached subsequently thereto, including 1947.

Carrier asserts that the Machinists rely on 1947 decisions to which the Carrier was never a party and from which the Machinists withdrew in 1955.

Carrier cites Decisions 411 and 433 of the 1947 jurisdictional dispute decisions made by the various Organizations as those upon which Petitioner apparently relies (without having identified the particular decisions), since these two decisions refer to drawbars.

Decision 411 decided that "the heating to straighten and tighten rivets, as well as riveting of drawbar yokes to coupler shanks, is Blacksmiths' work. Note: The above applies when Blacksmiths are employed."

Decision 413 held that "the welding necessary to repair drawbars is Blacksmiths' work."

Carrier adds that Decision 397 constituted the basis for Awards 411 and 413. Decision 397 reads: "Due to the word 'welding' being in the claim, if any pins are broken the welding of such pins or forging of a new pin would be Blacksmiths' work."

Carrier then concludes that the work in dispute also required welding of the drawbar assemblies and, therefore, the work is not restricted to Machinists; that the Boilermaker-Blacksmiths' merger resulted in the absorption of each class of work into the other so that Boilermakers may perform the work inasmuch as Blacksmiths were allocated the work in 1947. In any event, Carrier maintains, the 1947 awards establish the fact that Machinists do not have an exclusive right to work on draw bar pockets.

Carrier's original letter of declination stated:

"I hereby deny your four claims as it has been the practice that Boilermakers do this type repairs when it involves accident repairs and the boilermakers are doing repairs to adjacent parts in conjunction with the wreck. Machinists are doing the drawbar pocket repairs when it is found during regular inspections and must be upgraded to meet railroad standards."

Petitioner asserts, however, that members of the Machinists' Craft have historically performed work on locomotive draw bars or draft gears, which includes the draft gear pocket, regardless of the reason for such repairs; and that "the distribution of work is based on the nature and classification of the work involved," not on the reason for the repairs.

Carrier's highest authorized official declined the claim on January 9, 1978. He referred to the 1947 jurisdictional dispute settlement in which, allegedly, "The IAM recognized this work belonged to another organization, and that such work could be performed by machinists only when employees of such other organization were not available."

The declination letter then added:

"Where as here your organization has conceded that certain work belongs to a different organization, the fact that employes you represent have performed such work at points where Blacksmiths are not employed, even if performed regularly, does not enable them to the work at locations where Blacksmiths are employed."

Petitioner denies these Carrier statements, pointing out that the Organizations involved were the Blacksmiths (not Boilermakers) and Machinists on the Carrier's property; that none of the settlements or awards referred to the "draw bar pocket" involved in this case; that the Boilermakers were not a party to such jurisdictional awards; and that the merger of the Boilermaker and Blacksmith Organizations does not negate that fact that these two crafts work under separate classification of work rules. Petitioner adds that no Blacksmiths are employed at Carrier's Green Bay facility.

The Boilermakers' Organization as interested Third Party, submitted statements from Boilermakers at Green Bay and at other locations attesting that they weld and repair draw bar pockets throughout Carrier's system. Boilermakers maintain that draw bar pockets are an integral part of the engine frame.

The Boilermakers assert that the Machinists' Classification of Work Rule 62 makes no reference to "repairs", yet the claim is that Carrier assigned other than Machinists "to the work of repairing and welding the damaged draw bar pocket...". (Underlining in original). By contract, the Boilermakers cite their own Classification of Work Rule 92, which provides, in part:

"Blacksmiths' work shall consist of welding, forging, heating, shaping and bending of metal; tool dressing and tempering, spring making, tempering and repairing

... oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths' work..." (Underscoring in original).

As further evidence of its position, the Boilermakers quote the following statement in the Machinists' Ex Parte Submission:

"The work involved in this instant dispute was the repair and welding of the damaged rear draw bar or draft gear pocket on Alco locomotive No. 6724, which did not entail its removal, but did involve a significant amount of heating by torch, straightening, and rewelding." (Underlining in original).

The Boilermakers draw the conclusion that the Machinists' own description of the work performed places such work within the scope of the Blacksmiths' Classification of Work Rule 92, "inasmuch as the Machinist Classification of Work Rule lacks any reference to 'heating' in connection with shaping of metal".

The Boilermakers also deny the applicability of the 1955 bid postings at Carrier's Chicago Shops, for Machinists and Machinist Helpers to repair "draw bars and draft gears", inasmuch as the work here at issue involves draw bar pockets, which are an integral part of the locomotive frame itself.

Petitioner's Ex Parte Submission includes the statement that "the draft gear or draw bar pockets located at both ends of a diesel locomotive are made up of fabricated plates welded together and affixed to the locomotive's frame by the welding process; thus the pockets are not and cannot be considered an integral part of the frame casting itself." (Underlining in original).

But in the Machinists' Rebuttal to Carrier's Submission, we find the following statements: "This instant dispute clearly involves work done on a locomotive proper, not on appurtenances which have been removed therefrom"; and "The work involved in this dispute was the repair and maintaining of a diesel locomotive". (Underlining in original).

Even if we were to ignore this discrepancy as to whether a draw bar pocket is or is not an integral part of the locomotive frame, Rule 62, the Machinists' Classification of Work Rule, does not include the term "repair" in connection with locomotives.

Carrier in its handling on the property asserted, without contradiction, that the practice had been for Boilermakers to perform all of the claimed work at Green Bay until 1972 when the then Superintendent split the work between the two crafts based on whether damaged draw bar pockets required repair because of wrecks or derailments or whether they showed up during

the course of routine inspection. This assertion by Carrier's Assistant Vice President and Division Manager was confirmed by the Assistant Vice President--Motive Power, and so reported to the Machinists' General Chairman during the handling on the property.

The Boilermakers also furnished exhibits that Boilermakers performed repairs to draw bar pockets at several Carrier facilities, including the Green Bay Shop, Chicago Shop and Oelwein Shop.

The Machinists, for its part, also supplied exhibits by its members stating that they had performed the work claimed. One such statement, by a Machinist at Green Bay, the location involved in this claim, refers to his performing repairs on Draft Gear Pockets "over 9 years ago" and then cites three specific instances in the seven year period subsequent thereto. However, he made no allegation that only Machinists did such work.

Four identical statements by Machinists employed at the Cedar Lake Shops refer to their work in "rebuilding of the draft gear pocket by the electric-arc welding process" on various locomotives on specified dates in June and July 1977 -- four or five months after the date of the incidents involved in the instant claim. In any event, "rebuilding" of a draft gear pocket by removing "excess worn metal" -- the work they described -- is not the same as the work involved in the instant dispute; namely, the structural repair of a damaged pocket.

Commenting on the **denial letter** by Mr. Owens, Assistant Vice President and Lake Shore Division Manager, the Machinists state that the distribution of work on draft gear pockets as between the two crafts; i.e., based on whether repairs are necessary because of a wreck or whether detected during regular inspection, "is not permissible, ...is totally in error and ...is in violation of the provisions of the Controlling Agreement." Yet it is clear from the record that for at least 9 years prior to 1972, when such work allocation was made by a new Shop Superintendent, only Boilermakers performed all of the work at issue at this facility. If, as claimed by Petitioner, such work allocation was violative of the Agreement, then by custom and practice the work involved belonged to the Boilermakers who had been performing the work when the new Superintendent established the new basis for work assignments.

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. We are unable to find an express reservation of the work to Machinists in the language of Rule 62. Nor has Petitioner proved that the work by tradition, custom and practice is reserved exclusively to its members at this facility, much less at other Carrier locations. The evidence which was presented indicates that at least at several points on the Carrier's property, including the Green Bay location involved herein, the Boilermakers have traditionally, over many years, performed the disputed work.

Prior to 1972, Boilermakers performed all draw bar pocket repairs at the Green Bay Shop. A new Shop Superintendent in 1972 changed the practice by assigning to Machinists, repairs from normal inspections, with Boilermakers continuing to make repairs caused by wreck, collision or derailment. The new Shop Superintendent held this position from 1972 to 1976. It is clear, therefore, that Machinists, for many years prior to 1972, did not perform the work in question at the Green Bay facility and even after 1972, only performed such work when repairs were found necessary following routine inspection.

Without passing on the question as to whether the Shop Superintendent was authorized to allocate the work in the fashion he did, the fact remains that for about 5 years at this location the work was performed by Machinists and by Boilermakers -- depending on the situation giving rise to the need for making repairs to the draw bar pocket.

There is sufficient evidence in the record that the work claimed by the Machinists has been performed by Boilermakers at other locations on Carrier's property.

Since there is neither rule nor practice to establish Claimant's exclusive right to the work in question, the claim must be denied.

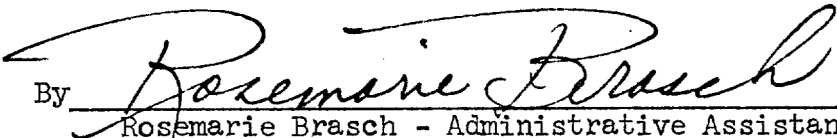
A W A R D

Claim denied.

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 5th day of September, 1979.

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LABOR MEMBER'S DISSENT

J. W. GOHMANN ~~IN~~ AWARD NO. 8068, DOCKET NO. 7795-T

This majority has reached a conclusion in such a rambling review of the parties positions that a crystal ball would be necessary to determine the essence of Award No. 8068. It can only be assumed that the "bottom line" was determined on "exclusivity."

In this lengthy epistle reviewing each and every position without any decision or ruling on each one with clarity certainly doesn't deserve a response except to several irrational conclusions displaying a complete lack of understanding of industry language and components and/or common dictionary interpretations. One such example was the astonishing rationale that the term "repair" was not in the Machinist Classification of Work Rule in connection with locomotives". It can only be assumed that this majority has still not got it "through his head" that railroad terminology evolving from steam engine days covers a piece of power equipment with language such as "locomotives, units, engines" and means the entire piece of equipment. Attention to the record would have clarified this. Beyond that this same majority quoted above rule in pertinent part as:

"Rule 62 describes machinists' work as consisting of 'laying out, fitting, adjusting, shaping, of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines... and electric welding on work generally recognized as machinists' work....'"

In review of the above language it would be irrational and idiocy to state that "repairs to locomotives" is not covered. Apparently dictionary referral is not in this majority's repertoire.

As far as the issue of exclusivity is concerned, only the

petitioner backed up their practice contentions with exact times, dates, equipment numbers, etc. Neither the Carrier or Third Party did this in any instance. This majority was furnished precedents in abundance that relegated such unsupported assertions to mere allegations status and unacceptable in Board determinations. The petitioner thereby proved exclusivity which this majority ignored while rendering an irrational abomination that demands this dissent which makes this Award a nullity.


George R. DeHague
Labor Member