Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8442
Docket No. 8348-T
2-BNI-MA-'80

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: International Association of Machinists and Aerospace Workers

Burlington Northern Inc.

Dispute: Claim of Employes:

1. That under the current Agreement the Carrier impermissible assigned to employes other than machinists the work of removing the Adzer drive motor on the Boring and Adzer machine, Serial No. 60115, disassembling the main gear reduction assembly, reassembling the main gear reduction assembly, incorporating new parts therein, and replacing the Adzer drive motor on said Boring and Adzer machine. This work was performed on Wednesday, March 29, Thursday, March 30, and Tuesday, April 4, 1978, at the Carrier's Tie Plant facility in Branerd, Minnesota.

2. That the Carrier accordingly compensate machinists Russell D. Jenkins and Herman Bradley, Jr. twenty hours each at the straight rate of pay for failure to assign them to the aforementioned work to which they were entitled under the controlling Agreement.

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 were given due notice of hearing thereon.

Claimants contend that Carrier violated Machinist Agreement Rules 27(a), 50 and 51 when it assigned employees of the Brotherhood of Railway and Airline Clerks to perform comprehensive repair work on the Boring and Adzer machine at the Brainerd, Minnesota Tie Facility. It argues that the aforesaid rules, when read in their entirety describe the work of the machinists and reserve to them the exclusive right to perform such work.

Carrier, contrawise, disputes these contentions and notes that BRAC employees traditionally performed this work at the Brainerd site and asserts that Rules 27(a), 50 and 51 do not vest exclusivity. It contends that Rule 27(a) merely provides that Machinists shall do the work set forth in the craft classification of work rules and does not specify any work. It avers that Rule 50 covers

Machinist qualifications and does not grant any specific work entitlements and that Rule 51 does not grant exclusivity to remove parts from an electrically driven motor. It asserts that the Machinist Agreement on the former Northern Pacific Railway, only applied to the employees in the Mechanical Department and that the Brainerd and Paradise Tie Treatment Plants were not part of the Mechanical Department.

In our review of the case, we take judicial notice that the Brotherhood of Railway and Airline Clerks were notified of this claim, pursuant to Section 3(j) of the Amended Railway Labor Act and the U.S. Supreme Court's ruling in Transportation-Communication Employees Union vs. Union Pacific Railroad 385U.S. 157165-6 (1966) and that said employee organization forwarded to the Division a third party submission. The pivotal question, thus before us, is whether the contested work exclusively belonged to the Machinists. The Brainerd Tie and Timber Treating Plant is a separate facility and employees in that plant are covered by a separate agreement. Its primary purpose is to treat ties and timbers for railroad maintenance. The Boring and Adzer Machine carves recesses into the tie for the placement of tie plates and drills holes for the spikes which are used to secure the rail to the ties. The Brotherhood of Railway and Airline Clerks consummated its first collective agreement with the Northern Pacific Railway on September 1, 1943, which covered the employees in the Brainerd and the Paradise plants. It is the only labor organization that ever represented employees at these locations. BRAC contends that it traditionally performed this work.

Machinist Agreement Rule 98(c) which is basic to this dispute states that:

> "It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreement as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

It does not by definition restrict its coverage and application to the signatory unions represented by System Federation No. 7, but applies to other employee organizations as well, which in this instance includes BRAC. Both contesting organizations were under separate agreements with the former Northern Pacific Railway. But close reading of the record shows that the former agreement between the Machinists and the Northern Pacific applied only to the employees in the Mechanical Department, which did not include employees at the Brainerd and Paradise Tie Treatment Plants. The Tie Treatment Plants were excluded. The June 15, 1966 Agreement relative to the fireless locomotive did not grant the Machinists the right to perform work at the Brainerd location, but limited such work exclusively to the locomotive. In fact, the last paragraph of this Agreement provides that:

"The foregoing constitutes a full and complete settlement of the claims of Machinists Erickson and Novick. The settlement will not be construed as establishing a precedent insofar as work on other than the locomotive assigned to the Brainerd Tie Plant is concerned."

Clearly, we cannot infer or conclude from these agreements that the work of repairing the Boring and Adzer Machine accrued to Machinists. Admittedly, outside help was called in to assist or advise the Tie Plant on technical problems, but such assistance was not tantamount to a relinquishment of work. The affirmations submitted by individuals that said work belonged to the Machinists were essentially non-specific and the travelling mechanic, who it appears was not assigned to Brainerd Plant, acknowledged that, "he was not being called to take care of the necessary maintenance and repairs of machines at this facility".

In the instant case, the BRAC employees removed parts from a Boring and Adzer Machine which included the removal of the Adzer drive motor and the disassembly of the main gear reduction assembly. The bullgear shaft and spacer ring were found defective and sent to Carrier's Brainerd Reclamation Plant for repairs by Machinists. They were returned to the Tie Plant and reassembled. It was not work that was traditionally performed by Machinists or accrued to them by pre merger agreement or past practice. It was work that was historically performed by the clerks at the Brainerd Tie Plant and protected by Rule 98(c) (Supra). In Second Division Award 7487, we held in pertinent part that:

"the claiming party must show an exclusive system wide practice on the former component railroad, prior to the merger."

We don't find that Claimants have demonstrated such exclusivity prior to the 1970 merger or that the work in question was covered by the Machinists' Agreement. We will deny the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of September, 1980.