

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it assigned the operation of Worksaver Fork Truck, N&W No. 9317, to Sheet Metal Worker L. Gesky at Decatur, Illinois Shops on November 1, 1977.
2. That the Norfolk and Western Railway Company continues to violate the controlling Agreement by repeatedly assigning the operation of the aforementioned Fork Truck to other than Machinist Helpers at Decatur Shops.
3. That accordingly, the Norfolk and Western Railway Company be ordered to compensate Machinist Helper B. J. Rawls in an amount equal to four (4) hours at the straight-time rate of pay.
4. That accordingly, the Norfolk and Western Railway Company be ordered to compensate the appropriate Machinist Helper as taken from the overtime board in an amount equal to four (4) hours at the straight-time rate of pay for each such violation after November 1, 1977, when the Norfolk and Western Railway Company assigns other than Machinist Helpers to the operation of the aforementioned Fork Truck.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 brings this claim on behalf of Claimant, a Machinist Helper, for four hours of pay because the Carrier allegedly improperly assigned a sheet metal worker to operate a Yale 3,000 Pound Worksaver Fork Truck on November 1, 1977 at the Carrier's Shop in Decatur, Illinois. In addition, the Organization presents this Board with a continuing claim because the Carrier has repeatedly and continuously permitted employees other than machinist helpers to operate the

fork truck after November 1, 1977. The Organization urges us to award four hours pay to unidentified machinist helpers on the overtime board for each subsequent alleged misassignment of the work. The Organization contends the operation of this small fork truck is exclusively reserved to machinist helpers pursuant to Rule 58 of the applicable agreement. While the Organization concedes that employees in other crafts have regularly run the fork truck, it argues that this practice is contrary to the Carrier's policy set forth in a January 18, 1967 bulletin issued by the Master Mechanic.

The Carrier argues that the Organization has failed to prove the disputed work is expressly and exclusively reserved to machinists by either Rule 58 or historical practice. As to the 1967 bulletin, the Carrier contends nothing in the Master Mechanic's communication shows any intent to reserve fork truck operation to machinist helpers. Also, the Carrier asserts the allegations of continuing violations must be dismissed due to vagueness as well as lack of proof.

The Boilermakers and Sheet Metal Workers endorse the Carrier's position and reiterate that members of their crafts have often used the fork truck in connection with the performance of work pertaining to their crafts. The Electrical Workers presented evidence that Electrical Workers have operated similar fork trucks not only at Decatur but also at other points along the Carrier's system.

To show the disputed work belongs exclusively to machinist helpers, the Organization shoulders the burden of proving either that the work is expressly and specifically reserved to machinist helpers by Rule 58 or that machinist helpers have traditionally, historically and customarily performed the work to the exclusion of all others. Second Division Awards No. 5577 (Ives); No. 6958 (Lieberman); No. 7141 (Sickles). Rule 58 refers to "... portable power driven cranes, trucks and tractors..." but there is no language suggesting the operation of small worksaver fork trucks is covered by the rule. Since the Organization concedes that there is a longstanding past practice that employees other than machinist helpers have regularly performed the disputed work, the Organization has not satisfied its burden of proof. Nor can the Organization rely on the 1967 bulletin because any policy contained in the bulletin does not supersede the clear, established past practice on this property. Therefore, we must deny the entire claim.

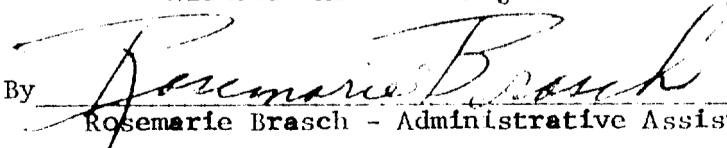
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March, 1982.