

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated the schedule agreement applicable on the Southern Region of the former G. M. & O. Railroad when they allowed Maintenance of Way employees to perform Machinists classification of work within the seniority jurisdiction of the I.C.G. Railroad's Iselin Shops at Jackson, Tennessee on January 10, 11, 12, 13, 14 and 15, 1979.
2. Claim is herewith submitted for eighty-eight (88) hours pay at one and one-half (1½) times the pro rata rate to be equally divided among the following machinists and machinist apprentices employed at Iselin Shop during the period of time of January 10 through January 15, 1979 while Maintenance of Way employees performed machinists work on roadway machinery undercutter machine number RM76UHR.

<u>Name</u>	<u>Employee No.</u>	<u>Name</u>	<u>Employee No.</u>
J. G. Holland	667810	G. D. Campbell	670819
I. B. Thomas	667834	J. L. Robinson	39188
J. T. Case	667800	R. H. Hill	616710
V. D. Rhodes	667716	M. D. Brown	43773
R. Ellington	669800	R. P. Connell	43807
B. J. Smith	669358	W. G. Mayfield, Jr.	44477
M. A. Presson	669995	L. D. Cain	45151
B. S. McCroskey	667841	J. C. Kiddy	42995
G. M. Willis	670549	G. N. Massengill	42998
J. E. Case	670647	W. H. Adams	41942
R. R. Beller	670743	P. K. Diffe	43729
J. S. Tilley	670751		

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 the claim date, Maintenance of Way Employees performed certain work on undercutter roadway machinery within the Iselin Shop, and the Machinists submitted a claim asserting that it was improper for these employees to perform that work.

Primarily, the Organization relies upon that portion of Rule 110 which reserves to them work of stripping and repairing engines of roadway machinery, and Rule 122 which concerns all other work generally recognized as Machinist work.

We have been unable to find that the rules cited by the Employees specifically cover the type of machinery here involved in this dispute. Thus, in order to prevail, the Employees must demonstrate that they have performed this work exclusively in the past. The record is rather clear that the Employees have not done so; but rather, that the Maintenance of Way forces have performed this work.

We have not ignored the contention that the Carrier has had the work in question performed at a point where the Machinists' seniority controls, but we do not feel that that fact, in and of itself, is sufficient to grant it jurisdiction of the work when the contract is not specific and other employees have performed the work in the past. Accordingly, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.

LABOR MEMBERS' DISSENT TO

AWARD NO. 9084

DOCKET NO. 8778-T

Employees are, and Carriers should be, thankful that all Referees do not give cases submitted to this Board such shallow consideration as is sometimes requested of them.

Award No. 9084 to Docket No. 8778-T issued by the majority with Referee Joseph A. Sickles sitting as Neutral Board Member is a most outright vicious attack upon the machinists Classification of Work Rule and Scope Rule pertaining to our contractual right to perform work within a seniority jurisdiction.

This is a "Seniority Jurisdictional Dispute" as the work performed in Iselin Shop by Maintenance of Way Employees is work on equipment contracted to Machinists by the Machinist Classification of Work, Rules 102 through 122 inclusive, and performed by M of W employees in a shop where Machinists hold seniority and no M of W employees hold seniority.

Contrary to the decision of the majority the work in dispute:

"changing roller bearings on excavating chain, servicing
oiling system, control arms, drive shaft, installing
rubber conveyor belt, inspecting, changing fuel filters
and greasing"

is work exclusively reserved to Machinists by agreement and to be performed by Machinists within their seniority jurisdiction.

Award 9084 is palpably erroneous and is of no precedential value as it does not rest four square with the Rules of the Controlling Agreement applicable to the issues in dispute.

The evidence of record before this Board proves beyond any doubt that a travesty of justice has been committed by the majority. The same evidence of record unrefutably portrays that the findings and conclusion of the majority are palpably erroneous, and to which this vigorous dissent is directed.


Richard A. Westbrook


Martin J. Cullen


James A. McAteer

CARRIER MEMBERS' REPLY TO
LABOR MEMBERS' DISSENT TO
AWARD 9084, DOCKET 8778-T

(Referee J. A. Sickles)

The accusation made by the author of the Dissent that the Majority gave "shallow consideration" to this case is completely unfounded as a perusal of the Award clearly demonstrates.

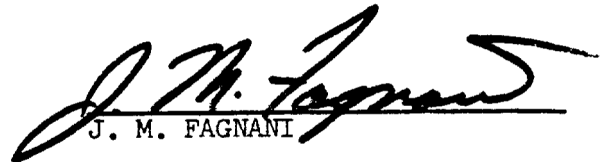
The dispute submitted to the Board involved a claim submitted by the Machinists' Organization based on an erroneous premise that Maintenance of Way employees performed work accruing to the Machinists' craft, namely, general maintenance work on the Plasser Undercutter Machine at Jackson, Tennessee.

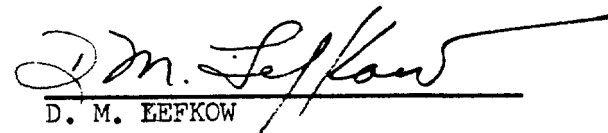
The established norm in cases of this type is that the Employees have the burden of proof to establish that: 1) the work claimed is assigned to them by specific reference in the agreement, or, 2) that the work has been assigned to members of the Machinists' craft exclusively throughout the system. This litmus test has been continuously applied by this Board in numerous Awards. See, for example, Second Division Awards Nos. 2544, 3662, 4172, 4292, 4517, 4990, 5151, 5577, 5578, 6082, 6608, 7141, among many others.

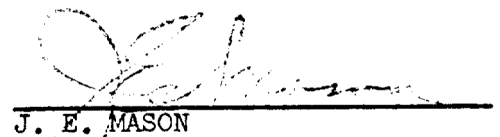
An examination of the Findings in this Award establishes that the Majority applied this test to the dispute before it and correctly found that the work in dispute was not specifically covered in the applicable Agreement rules nor had the Employees demonstrated that they had exclusively performed the work in the past. This being the case, the Majority ruled that the location where the work was performed was not controlling due to the Employees' failure to sustain the burden

of proof that the work accrued to them in the first instance.

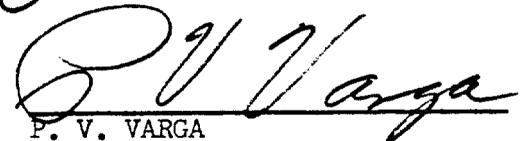
An experienced reader of this Award will recognize that the diatribe
of the Labor Members cannot detract from a sound and well-reasoned Award.


J. M. FAGNANI


D. M. LEFKOW


J. E. MASON


J. R. O'CONNELL


P. V. VARGA