

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
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rules 26 and 52(a) when they arbitrarily transferred the work of building a frame for Diesel Tractor Truck No. 1156 to the Boilermakers' Craft from the Machinist Craft at North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate C. G. Cook, R. G. Walls, A. K. Johnson, W. A. Etier, W. Brown, D. J. Bush, C. D. Trent, A. Brown, R. G. Stacks, E. Haney, R. Moore, J. S. Sullivan, H. P. Wilson, G. E. McBride, H. R. Murphy, D. R. Riggins, L. H. Hess, C. J. Zakrzeuski, T. M. Curtis, O. W. Howell, G. H. Gammell, W. E. Culp, C. J. Chudy, H. H. Haynie, G. A. Sampson, V. E. Herrington, G. C. Bailey, C. E. Crone, J. W. Brodwick, J. C. Ferguson, R. A. Mills, in the amount of eight (8) hours each at time and one-half per day for Machinists having been denied the right to perform Machinists' work.

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.

The Machinists Organization contends that Carrier violated Rule 52(a) of the controlling agreement when it assigned two (2) Boilermakers to perform work which it claims belongs to its craft. The Boilermakers were required to build a frame for Diesel Tractor No. 1156 which is placed in service at the Pike Avenue Diesel Shop in Little Rock, Arkansas in order to haul traction motor and wheel sets over public thoroughfares to the Ramp Drop Table. The Machinists Organization argues that the work is protected by the clear language of Rule 52(a) and cites the holdings in Second Division Awards Nos. 6762, 7345, 7379 and 8603 et al. as confirmatory evidence that work with metals relating to machinery and tools is machinists' work.

It avers that the Diesel Tractor Truck is properly shop machinery and asserts that a previous on situs grievance settlement agreement in 1944 disposed of this question.

Carrier contends that similar work was performed by Boilermakers in the past without complaint from the Machinist Organization and that Rule 52(a) does not reserve to the Machinists the exclusive right to build all devices, tools or machines, but instead, confers only the right to machine the metals used in building, assembling and installing machinery. It argues that the assembling of channel iron and heavy plate steel into steel bed for an over the road tractor truck is not work reserved by rule or practice to the petitioning Organization, but work assigned to the Boilermakers, pursuant to that Craft's Classification of Work Rule 62 (a). It asserts that the Machinists have never denied that this type of work was assigned to the Boilermakers or demonstrated that Machinists built the framework and steel beds for wagons and automotive vehicles designed to haul heavy locomotive and car parts from shop to shop. It avers that Second Division Award No. 7861 involving the same Organization and Carrier is more on point with this dispute, since it held that when Rule 52(a) does not expressly reserve the contested work to the Machinists by clear and unambiguous language and absence a showing that by system wide custom, practice and tradition such work was exclusively performed by the Machinists, the petition, of judicial necessity, must fall for want of acceptable probative evidence.

The Boilermakers' Organization, as an interested Third Party, argues that Rule 52(a) only reserves to the Machinists' craft the machining of metals used in work generally recognized as Machinists' work, which it contends is not the case herein, since the disputed work involved heavy structural steel work and steel underframes which is reserved by Agreement rule to the Boilermakers. It asserts that the building of a frame did not involve work with shop machinery, but with an over the road tractor truck, which is used for moving traction motors and wheel sets over public highways.

In our review of this case, we concur with Carrier's position. The pivotal question before us is whether an over the road diesel tractor truck can be reasonably considered as shop machinery as that term is set forth in Rule 52(a) and interpreted by numerous arbitral decisions. Close analysis of this Rule does not indicate that such equipment is included under the covered categories of protected work activities or that the building of a frame on this vehicle reflects the maintenance of shop machinery. The Diesel tractor truck was not used exclusively to perform readily identifiable Machinists' work and thus cannot be literally construed as protected shop machinery. Moreover, we find no unequivocal Agreement language that would unmistakably reserve this work to the Machinists or any inferential linkage among the separate listed work activities that would persuasively support such a finding. When we examine the work practices on the property with respect to similar work, we find no evidence that the Machinists performed this work on a system wide long term basis, but find that the Boilermakers performed analogous work. We have no record evidence that the Machinists ever challenged the aforesaid work practices and the 1944 on situs grievance settlement agreement cited by the Machinists as controlling is without judicial effect, since the subject of that settlement is notably distinguishable from the instant dispute. Upon the record and for the foregoing reasons, we are compelled to deny the claim.

Form 1
Page 3

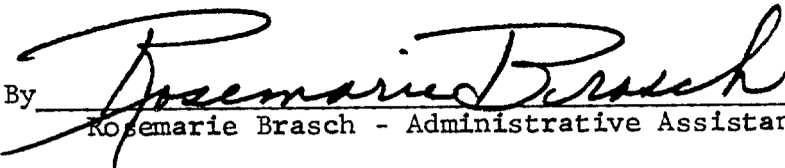
Award No. 9459
Docket No. 9251-T
2-MP-MA-'83

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 4th day of May, 1983.