

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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, during the period February 2, through 9, 1982.
2. Accordingly, the claim is herewith submitted for eighty-seven (87) hours pay at one and one-half times the pro rata rate to be equally divided among the following twenty-three (23) Machinists employed at Iselin Shop during the period February 2, through 9, 1982, when Maintenance of Way Employees performed Machinists' work on Burro Crane PR-37:

R. H. Hill	616710	J. T. Case	667800
W. E. Davis	42994	M. A. Presson	669995
J. N. Campbell	670745	R. N. Pierce	670581
B. B. Moore	44491	G. D. Campbell	670819
A. C. Concialdi	44910	B. J. Smith	669358
D. W. Coleman	44087	F. T. Hudson	39814
M. C. Pelly	44196	J. L. Robinson	39188
W. G. Moore	44607	M. R. Jones	44633
J. L. Johnson	44114	R. L. Ellington	42385
I. B. Thomas	667834	G. N. Massengill	42998
R. R. Beller	670743	J. E. Case	670647
G. M. Willis	670549		

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 employes 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.

Claimants are twenty-three machinists employed by Carrier, Illinois Central Gulf Railroad, at Iselin Shop, Jackson, Tennessee. Claimants allege that the Carrier violated the Schedule Agreement applicable on the Southern Region of the former Gulf, Mobile and Ohio Railroad when they allowed Maintenance of Way employees to perform work on the Burro Crane PR-37 during the period February 2 through February 9, 1982. Claimants allege that the Maintenance of Way employees were performing work that is properly within the machinists' classification and should have been assigned to machinists. Claimants are seeking eighty-seven hours of pay at one and one-half times the pro rata rate to be equally divided among themselves.

The Organization's position is that the Carrier violated Rules 32, 33, 40, 102, 110, 120, 122, and 123 of the controlling agreement (former GM&O Southern Region) when it assigned Maintenance of Way employees to perform machinists' classification work on the Burro Crane PR-37 at the Iselin Shop during the period February 2 to February 9, 1982.

The Organization alleges that the work performed on the Burro Crane PR-37, namely, the renewing of air brake seals to the brake system of the crane, involved disassemblment of gears and shafts of the crane, which is exclusively machinists' work performed in the Maintenance of Equipment Iselin Shop where machinists hold seniority.

The Rules of the "Southern Region" agreement in effect between the Carrier and the Organization effective January 1941, as currently amended, involved in this dispute are as follows:

"Rule 33. Assignment of Work

None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except foreman at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work.

At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

"Rule 102. Classification of Work

Making, repairing, erecting, aligning and dismantling locomotives, stationary and marine engines, machinery and metal parts thereof."

"Rule 110. Classification of Work

Removing, replacing and repairing tires on locomotives, stripping and repairing engines of steam shovels and roadway machinery, hoists, pumps, pile drivers, gasoline motor cars, steam pumps, gasoline, electric pumps and traveling cranes."

"Rule 120. Classification of Work

Repairing, applying and testing air equipment on engines and tenders (except applying and removing triple valves and brake rigging on tenders), grinding, turning, shaping, fitting, etc., to be done on triple valves including the testing and inspecting."

"Rule 122. Classification of Work

All other work generally recognized as machinists' work."

"Rule 123. Miscellaneous

In case of accident where machinery of engines is disabled requiring attention of machinists, they will be sent to accompany derricks."

The Organization contends that the Burro Crane PR-37 is roadway machinery and/or a traveling crane (Rule 110) and that any mechanical repairs made thereto should be assigned to the machinists craft employees who hold seniority at the point where the work is performed.

The Organization's position is that the Burro Crane PR-37 was repaired in the Maintenance of Equipment Shop under the jurisdiction and control of the Maintenance of Equipment Department, and machinists have historically performed work on Maintenance of Way equipment when such work is performed in a Maintenance of Equipment Shop. The Organization alleged that the Burro Crane PR-37 was at the Iselin Shop on only one occasion prior to February 1982 and that the repairs made on it at that time were done exclusively by machinists regularly assigned at the Iselin Shop.

Furthermore, the Organization stated that the Maintenance of Way employees who worked on the Burro Crane PR-37 were not equipped with the proper tools and equipment to do the job and that Claimants advised the machinists and Iselin Shop supervisors that they had never performed this type of work before and did not know how to disassemble the crane. Supervisors were required to instruct the Maintenance of Way employees how to perform the work.

Finally, the Organization alleges that because the crane was repaired in a Maintenance of Equipment Shop, under the jurisdiction and control of the Maintenance of Equipment Department, the work was subject to the applicable Scope Rule and Classification of Work Rules of the Agreement that controls the assignment of work on equipment of any type when such work is performed in and under the jurisdiction of the maintenance of equipment employees and not to the Maintenance of Way employees.

The Carrier's position is that the Classification of Work Rule was not violated as the machinists in the Mechanical Department do not have an exclusive right to repair Maintenance of Way equipment.

The Carrier argues that this Board has held that an Organization in cases of this kind has the burden of proof to demonstrate that certain work has been exclusively performed by a certain craft, historically, customarily, and systemwide. The Carrier contends that the Organization has not only failed to show that its members have exclusively performed the work, but that the Organization has not even provided evidence that it ever made repairs on the Burro Crane PR-37 in the past. Moreover, the Carrier states that it has shown that maintenance of way work equipment repairmen were specifically trained to repair the equipment and had performed the repairs since Burro Crane PR-37's have been used by the Carrier.

Moreover, the Carrier argues that the location where the work is performed is irrelevant. The Carrier states that the parties have not agreed that machinists should repair all equipment located in the Maintenance of Equipment Shop.

The Carrier contends that the Organization has no legitimate claim to the work and that the claim should be denied.

The Brotherhood of Maintenance of Way Employees filed a third-party response to the claim, alleging that the work in question falls within the jurisdiction of the Carrier's employees in the Work Equipment Subdepartment and that such work has been historically and exclusively performed by such employees and is reserved to them under Rule 2. Rule 2 states, in pertinent part, as follows:

"Employees in each subdepartment will perform the work customarily performed in that subdepartment. Seniority rights of all employees are confined to the subdepartments in which employed, except as otherwise provided in this agreement. The subdepartments are defined as follows:...

E. Work Equipment Subdepartment

- (1) Foremen
- (2) Leadmen
- (3) Repairmen
- (4) Helpers"

This Board has thoroughly reviewed the evidence in this case, and it finds that the burden of proof rests entirely upon the Organization to demonstrate that it is entitled to the work in question. (See Second Division Award 10076.) Moreover, in order to prevail in a case of this kind, an Organization must show by strong and conclusive evidence that it is entitled to the work by specific rule language or by virtue of an exclusive systemwide past practice. (See Second Division Awards 7020 and 10091.)

In the case at hand, the Organization has been unable to show that it had exclusively repaired Burro Crane PR-37's on behalf of the Carrier on a systemwide basis. The fact that the work was performed in the pit at the

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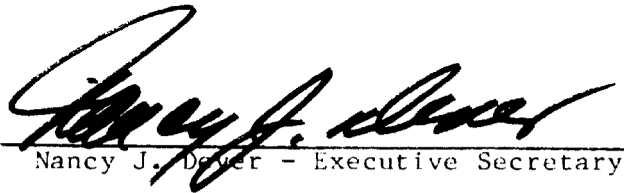
roundhouse because of bad weather is not determinative. The place that the work is performed is not the test that is utilized in order to determine within which craft's jurisdiction the work falls. Without clear and convincing evidence that the Claimants' craft exclusively performed the work in question on a systemwide basis, this Board is unable to take any action other than to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985