

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12706
Docket No. 12560
94-2-92-2-79

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists
(and Aerospace Workers (District 19)
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 5-F-1, Scope, and Past Practice and Customs.
2. Accordingly, the claimant is entitled to the payment as requested, an additional eight (8) hours pay at the applicable rate for the day of January 15, 1990."

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 Claim of the Organization is that the Carrier violated the Scope and Classification of Work Rules on January 15, 1990 by permitting other than Machinists to repair a tire on the crafts' Maule. The facts are not in dispute. The off road vehicle required a tire repair which was performed by a Car Repairman and Foreman while a Machinist was on duty and available. The Organization argues that the disputed work is Agreement protected. The vehicle is maintained by the Machinists' craft and the work performed by others violated the Scope Rule and the Machinist Classification of Work Rule.

The Carrier denies that changing a tire is work protected by Agreement accruing exclusively to the Machinists. It argues that the disputed work has been performed by numerous different crafts and classes of employees. The Carrier also points out that the Scope Rule protects skilled work and does not include or contemplate the protection of the changing of tires on Carrier owned or leased equipment.

The Board has fully reviewed the merits of the instant case. Rule 5-F-1 was not a part of the dispute on property and is therefore not properly before us. The Scope Rule does not include language protecting the right of repairing tires to the Machinist Craft. The Organization has provided signed statements from two machinists as probative evidence that the work belongs to the employees. Those statements read in pertinent part that:

"... I have personally performed and/or have personal knowledge that the Machinists employed at Enola have, historically by practice and Agreement, performed the work of changing flat tires on shop maules used in the Enola Shop Area."

The Board fails to find the statements include the requisite proof. The employees do not claim that the work was performed only by Machinists who have in the past exclusively performed the work of changing or repairing tires. They do not overcome the Carrier's denials that it has used other employees and private garages to perform the work. The employees provide no proof of Agreement language or exclusivity. The Carrier introduced three other identical claims including the same Rules and arguments which were pursued up to the Carrier's highest officer, which after declination were withdrawn. The Board notes the different location, but the result of acceptance settles the issue, as well as demonstrates that others performed the disputed work (Second Division Award No. 12056). There was no dispute on property over the differences on work Rules applicable to Highway Motor Vehicles. Focusing solely on the record as developed on property, the burden of proof has not been met.

There is a lack of proof that the governing Rules reserve the disputed work to the employees. There is no clear cut evidence that historically by practice only Machinists have changed tires. For all the reasons presented, the Board must decline the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.