

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13012
Docket No. 12891
96-2-94-2-34

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(The Union Pacific Railroad Company

STATEMENT OF CLAIM:

"1. That the Union Pacific Railroad Company, violated Rules 26, 52 and Article V and VII of the Agreement dated July 31, 1992, but not limited thereto, of the controlling Agreement when it assigned an Electrician to perform Machinist work on EMD turbochargers, which involves the balancing of EMD turbocharger rotor assemblies, which are being prepared for final assembly in the Carrier's turbocharger rebuild facility located in North Little Rock Arkansas, from January 1, 1993, and continuing heretofore in the Carrier's turbocharger rebuild facility located in North Little Rock, Arkansas. An EMD turbocharger is a major mechanical component on an EMD engine, contained in the locomotive. All mechanical components on diesel engines contained in the locomotives are covered under Machinists' Classification of Work Rule 52. This includes (i.e. oil pumps, water pumps, air compressors, shafts) and all other rotating equipment related to the direct operation of the engine. The turbocharger subsequently supplies air to the internal combustion components of the diesel engine.

2. That in addition thereto, Union Pacific Railroad continued said violations at the turbocharger rebuild facility located at North Little Rock, Arkansas, subsequent to January 1, 1993.

3. That accordingly, Union Pacific Railroad Company be ordered to pay Machinist, J. J. Dynek two (2) hours each day at the applicable Machinist rate of pay, including the applicable skill differential, retroactive to January 1, 1993 and continue such compensation until the Carrier properly assigns the disputed work to members of the Machinists Craft at North Little Rock Arkansas."

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.

As Third Party in Interest, the International Brotherhood of Electrical Workers were advised of the pendency of this case and filed a Submission with the Division.

The Organization alleges that the Carrier has assigned work belonging to the Machinists Craft to Electricians. It centers its argument that the Carrier has violated Article V, Section 1, the Incidental Work Rule on the basis that the misassigned work requires special training and special tools. Specifically, the qualifying of surfaces and balancing of Turbo Rotor Assemblies is performed on a lathe which qualifies as a special tool and by a Machinist entitled to a skill differential, negating any argument it is a simple task.

As this claim was progressed on property, the Organization made note of several important considerations to its claim. The Organization pointed out that prior to approximately September 15, 1992, Machinists had historically and exclusively ground metal away from the unbalanced part of rotors to reachieve balance using the turbocharger rotor balancing machine. Classification of Work Rule 52 lists the work, and the twenty five cents skill differential provided for in Article VII of the July 31, 1992 Agreement has been paid. The Machinist who had been performing the work trained the Electrician as to how it was performed. In its Rebuttal to the Electrical Workers Third Party Response, the Organization insists that the Machinists Craft has the exclusive work of operating lathes; and that the work in dispute was transferred from North Little Rock which it argues includes the balancing of the turbocharger rotor assemblies disputed herein.

The Carrier denied that the work performed required either special training or special tools. It denied the applicability of either Article VII or Rule 52 arguing that "there is no precision skills needed ... since it is at best a trial-and-error method to bring the rotor into balance." The Carrier maintains that the complained of work falls squarely under Article V of the National Agreement pertaining to incidental work in that the grinding is a simple task. Carrier points out that it did not provide or require the Electrician to obtain any special training. The work was performed with a hand grinder, was incidental to the balancing work performed and did not exceed the Agreement specified time limits.

The Board has studied all elements of the claim at bar and excluded from its consideration new material presented in Submissions by either party. The burden of proof rests with the Organization to demonstrate that the work performed by Electricians was assigned in violation of the Incidental Work Rule. The Board's review finds that the work is the work of the Machinists. However, although Machinists have always done this work, we are confronted with a new Rule. A study of the Incidental Work Rule as well as Awards pertaining thereto requires sufficient probative evidence of misassignment wherein it is shown that skill training, special tools or other violative elements occurred (Public Law Board 5479, Case No. 1, Award No. 2; Second Division Awards 12776, 12774).

In this record the Board finds insufficient proof to support a violation of the Agreement. First, the work performed is defined on property as requiring a "small hand grinder." There is no language in the Agreement nor persuasive evidence submitted that this constitutes a "special tool." Second, there is insufficient evidence for the Board to conclude that the Machinist's training to the Electrician as to how to perform the work constituted special training. The Board can find no evidence as to what that training constituted and as stated by Second Division Award 12776, such training "is not intended to include learning to perform simple tasks that require only a brief period of instruction..." Third, the Carrier stated that the grinding work "takes less than five minutes to perform." Again, the Board finds no rebuttal by the Organization. The Board also finds no evidence that the grinding is a preponderant part of the assigned work. Lastly, a careful consideration of the twenty five cents skill differential does not indicate it was paid for this disputed work.

Accordingly, the Board is constrained by Agreement language to the facts of this case. The work herein performed was incidental requiring no special tools or skills. The claim must be denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 10th day of July 1996.