

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14179
Docket No. 14016
17-2-NRAB-00002-140049**

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

**(International Brotherhood of Machinists and Aerospace
Workers)**
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- “1. That under the Agreement(s), the Norfolk Southern Corporation erroneously assigned an Electrician who is a member of the Electrician Union (IBEW), namely P. Saunders to perform work reserved exclusively to the Machinist Craft, as a main work assignment at the Norfolk Southern Conway, PA Diesel Terminal. The Electrician was assigned by an advertised bulletin position 2013-EL-09, JP E1086 the work of Control tool inventory and distribute material/parts necessary in repairing locomotives for approximately eight (8) hours per day. The assignment was in violation of the Agreement between and IAM and Norfolk Southern Railway Company (“NSR”) dated September 1, 2010, as amended particularly but not limited to Rules 35, 59 and Appendix “J” Assignment of Work Practices. As the above referred to assigned work belonging to members of the IAM, by past practice and custom have been assigned to members of the other Craft as specified. Additionally, the Carrier is in violation of the Railway Labor Act, and particularly the status quo provisions thereof.**

- 2. Accordingly, being that the Carrier deprived the Claimant of his contractual right to perform the disputed work covered by the Machinist Agreement(s), this is a continuous claim on behalf of the Claimant, Machinist M. D. Fehir (Employee No. XXXXX).**

Whereas, commencing on June 16, 2013 he is entitled to eight (8) hours pay at the overtime rate for every day that the Carrier assigns employees that are strangers to the Machinist Craft, and particularly of the Electrician Union (IBEW), namely P. Saunders at the Conway Shop, to perform the Machinist work, Control tool inventory and distribute material/parts necessary in repairing locomotives, that was previously performed by IAMAW represented employees.

3. Accordingly, the work should be reassigned back to the Machinist Craft.”

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 were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers (IBEW) was advised of the pendency of this dispute. The IBEW General Chairman advised the Carrier that it did not plan to participate in the hearing or file any submission in connection with this matter.

The Carrier owns and operates a locomotive running repair facility known as the Conway Diesel Terminal, in Conway, Pennsylvania. Locomotive service and repairs performed at Conway require employment of several crafts, primarily, electricians and machinists, who perform their duties at various work stations and who use a variety of tools, from simple to complex. The craft employees engaged in

the work of servicing and repairing locomotives use a variety of parts, which must be accounted for in order to ensure that inventories are properly managed and the parts utilized by the craft employees are available and correctly charged out to them.

According to the Carrier, non-agreement supervisors and craft employees assigned to a Supervisory Gang Leader or “quasi-supervisory” Working Gang Leader positions are responsible for ensuring that the various work stations are set up, tasks are assigned, and the work required on the locomotives is timely completed. This includes charging out the parts and accounting for the labor expended with respect to particular locomotive repair tasks.

The Carrier submits that, by way of background, prior to 2012, locomotive parts at Conway were housed in an area of the shop and accounted for in an unreliable manner. Parts were checked out by the employees whose diligence with respect to correctly charging out and reordering parts varied. Any craft employee could retrieve parts for use at the work station. Similarly, the task of reporting the time spent on locomotive repair tasks fell to the employees whose duty it was to provide that information to a non-agreement supervisor, Supervisory Gang Leader, or Working Gang Leader who, in turn, would enter information on parts and labor into the Carrier’s Locomotive Management Information System (LMIS) database.

The Carrier states that, with respect to the handling of tools, versus parts, before 2012, the Carrier had insufficient controls in place for tracking the use of specialty tools shared by the craft employees. The specialty tools, which were not used in everyday tasks, tended to be stored in the General Foreman’s office or scattered throughout the shop and collected by the employee needing the tool for use at the work station. The lack of a process for formally controlling and accounting for the tools resulted in tools being misplaced, left in lockers, and, thus, unavailable when needed.

The Carrier also explains that the Conway Diesel Terminal traditionally has maintained a first shift Machinist Craft Tool Room Attendant Position which still exists to this day. In the past, the Tool Room Attendant’s quarters consisted of a work space fashioned from a shipping container modified for use in the terminal. The primary functions of the Tool Room Attendant involved calibrating, maintaining and repairing tools, including the shared specialty tools. The Tool Room Attendant’s responsibilities did not include keeping track of the location of the tools.

According to the Carrier, in 2012, the Mechanical Department commenced implementing a large scale process improvement initiative in its car and locomotive shops. The aim of the program, called NSight, was to identify current best practices, establish a baseline for future improvement, reduce waste, and provide training. The NSight program worked in concert with the Carrier's recently implemented SAP, Enterprise Management Software, a new accounting system at the time.

The Carrier asserts that the SAP accounting practices dictate that all material is charged against each shop's budget at the time the material is received from a vendor rather than when actually used. The system provides for more stringent accountability and control. The Mechanical Department's Locomotive Management Information System (LMIS) was improved and upgraded to allow for integration with the SAP software in order to better account for inventory, which resulted in the conversion of the Carrier's shops from an "open stock inventory system" to a "closed storeroom model."

The Carrier furthermore states that the changes in the inventory accountability and parts tracking processes led to the construction of a new Material Storage Wing at the Conway Diesel Terminal, for the purpose of storing locomotive parts and all of the shared tools, and providing a new work area for the Machinist Craft Tool Room Attendant. The employee who held the position of Tool Room Attendant continued to do so. However, three new positions entitled Parts and Tool Room Specialists (PTCS) were created for the purpose of controlling tool inventory and distributing parts necessary for repairing locomotives. The three positions ultimately were bulletined and awarded to electricians over strong objections by the Organization, leading to the instant dispute.

As the Carrier's operational changes were underway, the IAM&AW Local Chairman and General Chairman became aware that during the week of May 20, 2013, the Conway Shop Manager was preparing to establish three new positions in the terminal with the main responsibilities involving tools, material and equipment associated with locomotive repairs. Consequently, on May 21 and 22, 2013, three new Parts and Tool Control Specialist Positions (PTCS) were advertised at the Conway Diesel Terminal. Two were advertised for electricians, and one was advertised for a machinist. The three positions were advertised as "New Positions," as follows:

“Bulletin Number: 2013-MA-19 Running Repair (posted 5/21/13)

Machinist – JP I5357 Repair Gang – 2nd Shift

Sunday – Thursday 3PM – 11PM (Relief days: Friday & Saturday)

General Work – Control tool inventory and distribute material/parts necessary in repairing locomotives. Incumbent must have a working knowledge and demonstrate proficiency in navigating through LMIS including but not limited to changing parts to locomotives. Incumbent must also have good leadership, communication and organization skills.

PARTS AND TOOL CONTROL SPECIALIST

Bulletin Number: 2013-EL-08 Running Repair (posted 5/22/13)

Electrician – JP E1080 Repair Gang – 1st Shift

Sunday – Thursday 7AM – 3PM (Relief days: Friday and Saturday)

General Work – Control tool inventory and distribute material/parts necessary in repairing locomotives. Incumbent must have a working knowledge and demonstrate proficiency in navigating through LMIS including but not limited to changing parts to locomotives. Incumbent must also have good leadership, communication and organization skills.

PARTS AND TOOL CONTROL SPECIALIST

Bulletin Number: 2013-EL-08 Running Repair (posted 5/22/13)

Electrician – JP E1081 Repair Gang – 3rd Shift

Sunday – Thursday 11PM – 7AM (Relief days: Friday and Saturday)

General Work – Control tool inventory and distribute material/parts necessary in repairing locomotives. Incumbent must have a working knowledge and demonstrate proficiency in navigating through LMIS including but not limited to changing parts to locomotives. Incumbent must also have good leadership, communication and organization skills.

PARTS AND TOOL CONTROL SPECIALIST”

The Organization submits that contrary to “past practice, custom and agreement,” Shop Manager T. D. Stuart bulletined one position for a machinist and two positions for electricians. As a result, the IAM&AW General Chairman contacted the Carrier’s Assistant Director of Labor Relations. According to the Organization, at the conclusion of that discussion, the General Chairman was of the understanding that

the two positions bulletined to the electricians would be abolished and re-advertised to the machinists, under Rule 17, Vacancies or New Positions.

On May 29, 2013, the second shift PTCS Position JP I5357, advertised in Bulletin Number: 2013-MA-19, was awarded to the Claimant, Machinist M. D. Fehir, effective on May 31, 2013. However, according to the Carrier, when the Shop Manager became aware that the IAM&AW General Chairman was protesting the initial bulletining of two of the PTCS positions to the IBEW electricians' craft, the Shop Manager reviewed the duties of the new PTCS positions. Shop Manager Stuart found that because the majority of the parts housed in the new Material Storage Wing were for electrician-related tasks, and the shared tools would be primarily used for electricians' work, that all three positions should go to the electricians.

Therefore, on June 4, 2013, the single PTCS position bulletined to the Claimant was abolished, and on June 5, 2013, that third position was bulletined to the IBEW electricians and awarded to Electrician P. Saunders, effective June 14, 2013. The Organization contends that the Shop Manager was unwilling to resolve the General Chairman's initial concerns about advertising all three positions to the Machinists and, hence, after being questioned, took a retaliatory stance by abolishing the PTCS position advertised to the machinists and awarded to the Claimant and giving all of the work to the electricians' craft.

On July 8, 2013, the Organization submitted a continuing claim to Shop Manager Stuart, requesting eight hours pay at the overtime rate for each day the Carrier assigns employees that are strangers to the machinist craft, particularly Electrician P. Saunders at the Conway Diesel Terminal, to perform machinist work, control tool inventory and distribute material/parts necessary in repairing locomotives, that was previously performed by IAM&AW-represented employees.

The Organization contends it is clear that the Carrier has failed to abide by the established Agreement language which does not support the assigning of machinists' work to employees of the electricians' craft. The Organization contends it has indeed established that its members have exclusively performed all of the work that has been assigned to Electrician Saunders. The Organization has submitted statements from employees in the shop, positively stating that the aggrieved work has been performed exclusively by machinists prior to September 1, 2010.

The Organization contends that the assignment of work to the electricians' craft violates Rule 35, Machinists or Student Machinists to Perform Machinist's Work, and Rule 59, Classification of Work, of the September 10, 2010 Agreement, as well as Appendix "J," Assignment of Work Practices, of the September 10, 2010 Agreement. Rule 35 states that, "none but machinists or student machinists regularly employed as such will be assigned to do machinist's work as per the special rules of the craft." Rule 59 states that in addition to tasks as specifically stated, "Machinists' work shall consist of...and other work generally recognized as machinists' work." Appendix "J" provides that, "work practices involving work assigned to the IAMAW shall continue to exist and apply on all former Conrail locations on a point-by-point basis as if the Conrail Classification or Work Rule still applied."

It is the Organization's position that the work performed by the incumbents of the new PTCS positions, Electricians D. A. Marovich, D. A. Beighey, and P. Saunders, was performed by machinists employed at the Conway Diesel Terminal prior to the Norfolk Southern Railway's acquisition of Conrail, on both a system-wide basis and point-by-point basis. The above-cited rules and provisions do not allow for the assignment of this work outside of the machinists' craft, and such work clearly has been improperly assigned to the electricians' craft.

The Organization submits that the Board's decision in Award No. 3 of Public Law Board No. 6353 supports its position that the instant claim should be sustained. That Award denied a claim filed by electricians employed at the Carrier's Juniata Locomotive Shop after the Carrier took over that Conrail property on June 1, 1999. The claim demanded that the Carrier cease using machinists to perform the work of installing and hooking up traction motors in the Drop Pit area of the Back Shop in Department 340. According to the Organization, that Award is directly on point with the Organization's position in this case.

The Organization furthermore disputes the Shop Manager's assertion, in his August 22, 2013 claim denial letter, alleging that, at the time of the claim, the Material Storage Wing was a new facility and the LMIS software was newly implemented. The facility Shop Manager Stuart contends was "new" actually had been constructed in phases on the exact physical location of the "old" facility. According to the General Chairman, who worked at the Conway Diesel Terminal until his retirement in June

2007, the LMIS software system already had been implemented. The Organization submitted several written statements purportedly supporting its position that the allegedly new LMIS technology has existed for many years and has been utilized by the machinists employed at the diesel terminal.

Also in response to the Shop Manager's August 22, 2013 claim denial, the Organization submits that with respect to the "specialty tools" previously scattered from one end of the facility to the other and stored at different locations, the fact remains that the machinists' craft has always held the positions established in the tool room. The machinists employed in the tool room have always tended to the duties of maintaining, repairing and distributing tools to all crafts whether the tools have been considered "general tools" or "specialty tools." Tools utilized at the facility, include LSL testing equipment, meters for testing electrical components, cooling system pressure testing equipment, lube oil system testing equipment, cab signal equipment, torque wenchers, impact tools, heat guns, ratchets, sockets, cable cutters, hydraulic crimpers, drills, drill bits, and lifting devices. Machinists have always held the positions responsible for maintaining, repairing, and distributing tools.

Consequently, the Organization submits that the Carrier violated the Agreement between the IAM&AW and the Norfolk Southern Railway Company, dated September 1, 2010, as amended, and particularly Rules 35 and 59, Appendix "J" and past practice and custom, when it arbitrarily assigned work belonging to members of the IAM&AW to members of the IBEW electricians' craft.

The Carrier submits that the operational changes implemented at the Conway Diesel Terminal included creating a Material Storage Wing to house locomotive parts and shared tools, establishing the three new PTCS positions responsible for charging out parts as retrieved, and providing accountability for the shared tools. Assigning IBEW electricians to the PTCS positions, constituted a proper exercise of managerial discretion to improve efficiency. The PTCS positions performing new work resulting from the operational changes regarding parts and tools were properly bulletined to the electricians' craft pursuant to the applicable agreements. The Carrier's right to improve efficiency, including the handling of parts and tools, is well understood and not in dispute. The Organization has failed to prove that an Agreement provision exists that restricts the Carrier from assigning the new work in the manner deemed appropriate. See, First Division Award 16032, and others.

According to the Carrier, the machinists' Rule 59, Classification of Work Rule, and historical practices regarding the Machinist Tool Room Attendant do not reference or encompass handling or charging out of locomotive parts. The only rule reference with respect to tools, reads, "Machinists' work on tools, including shaping and hobbing dies, sharpening drills, reamers, taps, cutters, machine tools and other tools pertaining to the machinists' trade." The position of Tool Room Attendant held by a machinist continues to perform the same duties today as it did prior to the establishment of the PTCS positions.

The Carrier furthermore asserts that the Tool Room Attendant's work location simply was changed to a new and separate office within the new Material Storage Wing, into which the tools and related parts also were moved. Afterward, the craft employees continued to obtain their shared tools in the same manner as before the new PTCS positions were added. The only difference is that the tools were retrieved from a central location. The PTCS employees document who has checked out the tool and record when the tool is checked back in. The machinist Tool Room Attendant did not perform those tasks. He managed tool calibration and performed maintenance and repairs on the tools and, again, continues to perform those same tasks today as he had done prior to the establishment of the PTCS positions.

As regards the LMIS system functions, the Carrier contends that the work of charging parts and labor to locomotives via the LMIS system has traditionally been performed by non-agreement supervisors, supervisory gang leaders, and the quasi-supervisory working gang leaders. Such work is not that which has been recognized as belonging to any craft. The statements provided by the Organization under cover letter of February 1, 2014, actually affirm that this particular work in dispute is supervisory work performed by employees working in the capacity of working gang leaders as opposed to employees holding machinist positions. Work performed by non-agreement supervisors or by the incumbent of a quasi-supervisory working gang leader position cannot be deemed as exclusively belonging to the machinist's craft.

It is the Carrier's strong position that the Organization has failed to meet its burden of proof obligation to demonstrate that the work involved in this dispute belongs exclusively to the machinists' craft and warrants the requested remedy. The Organization has failed to establish any contractual right to perform the work

assigned to the electrician PTCS positions, and has not identified any rule or practice requiring the Carrier to assign the disputed work to the machinists' craft.

According to the Carrier, Rule 35, Machinists or Student Machinists to Perform Machinist's Work, and Rule 59, Classification of Work, do not provide that machinists' work encompasses the tasks regarding charging out locomotive parts and accounting for shared tools – the exact duties that the Carrier has delegated to the PTCS positions. Moreover, Rule 59 does not expressly mention the Organization's characterization of the tasks – “control tool inventory and distribute material/parts necessary in repairing locomotives.”

With respect to the phrase, “all other work generally recognized as machinists' work,” found in Rule 59, the Organization never submitted any past practice evidence that the duties delegated to the PTCS positions have been exclusively performed by the machinists at the Conway terminal. The Tool Room Attendant position continues to be filled by a machinist and performs the same historical duties. The work of charging out parts continues to be done in a supervisory capacity, as discussed above.

Likewise, Appendix “J” of the Schedule Agreement lends no support to the Organization's position and has no application in this dispute. The Organization has failed to show that the work at issue was specifically contained in the Conrail Agreement Machinist's Classification of Work rule, that applied at Conway prior to the October 10, 1998 Implementing Agreement. During the on-property handling, the Organization failed to establish that under the Conrail Agreement, employees working in the machinists' craft had the exclusive right to perform the work that the Carrier has recently assigned to the PTCS positions.

As to the host of statements provided by the shop managers and employees who have described aspects of the operation with regard to tools and parts before and after the construction of the new Material Storage Wing and the Carrier's adoption of the process improvements, the Carrier contends that the statements illustrate that the tasks assigned to the newly created PTCS positions did not previously belong to any other specific position or particular craft and have not been performed by Conway machinists by exclusive past practice. Given the lack of applicable rule language or evidence of a past practice, the instant claim lacks merit in all respects.

Turning to the remedy requested by the Organization, the Carrier avers that the instant claim for eight hours at the overtime rate for each date the Carrier assigns “employees who are strangers to the Machinist Craft” to the PTCS positions held by electricians is excessive and without basis. The Claimant has been fully employed on his regular assignment and performed no PTCS position work during the claim period. The Organization has submitted nothing in support of the eight-hour overtime payments in addition to the earnings of his 40-hour per work regular assignment.

The Board has carefully reviewed the full record properly before us, as well as the parties’ submissions and the arbitration awards cited by the parties in support of their respective positions. Initially, the Board notes the Carrier’s position that the Board may lack jurisdiction over this matter because of the possible existence of a jurisdictional dispute between the IAM&AW, as the moving party in this claim, and the IBEW, to whom its craft members were assigned the three PTCS positions.

Upon our review of the record, the Board finds insufficient evidence of a jurisdictional dispute between the IAM&AW and the IBEW warranting the disposition of this dispute pursuant to Appendix A, Disposition of Jurisdictional Disputes, of the Memorandum of Understanding concerning Disposition of Jurisdictional Disputes, dated November 23, 1946. Although the record conveys there was some initial discussion among local management and the local chairmen for the IAM&AW and IBEW concerning the new positions, the Board fails to find any evidence that the IBEW took a firm position in this matter or sought to intervene or participate in the claims handling process.

As stated above, although the IBEW was identified as a Third Party in Interest, the record confirms that the IBEW declined to file an ex parte submission before the Board or appear before the Board during the hearing of this dispute. Therefore, the Carrier’s request that the Board dismiss the instant claim for lack of jurisdiction is denied. Second Division Award 6809, as cited by the Carrier, appears to be factually distinguishable from the facts present in this case and, thus, is not applicable to the instant dispute.

Next, in response to a procedural concern raised by the Organization in its ex parte submission to this Board concerning closure of the record, the Board concurs that the evidentiary record must be considered closed upon the Organization’s filing of

the Notice of Intent, on May 14, 2014. Therefore, any correspondence between the parties concerning their efforts to settle this dispute subsequent to the Organization's filing of the Notice of Intent, and confirmation of receipt by the NRAB as communicated to the parties, on May 15, 2014, shall not be considered by the Board.

Last, in response to an objection raised by the Carrier in its ex parte submission to the NRAB concerning the framing of the Statement of Claim as set forth in the Notice of Intent and as captioned above, the Board concurs that the third paragraph in the above Statement of Claim as taken from the Notice of Intent is not properly before the Board. As the Carrier points out, the third paragraph requesting, "Accordingly, the work should be reassigned back to the Machinist Craft," was not included in the Statement of Claim as framed in the Organization's July 8, 2013 initial claim. The absence of that third assertion from the original claim precludes the Board from now affording it consideration because that assertion was not at all before the parties during their on-property handling of this dispute.

Turning to the merits, the Board finds insufficient support for the Organization's position that the work assigned to each of the three PTCS positions ultimately advertised and awarded to Electrician D. A. Marovich, Electrician D. A. Beighey, and Electrician P. Saunders, accrued to IAM&AW-represented employees by rule or past practice. Rule 59 – Classification of Work, does not specifically reference duties involving controlling tool inventory and distributing material and parts. With respect to tools, the second paragraph of Rule 59 specifies work along the lines of tool maintenance pertaining to the machinists' trade, presumably the exact work as performed by the incumbent of the Machinist Craft Tool Room Attendant Position.

Moreover, the record lacks evidence establishing that the work of the three PTCS positions accrued to the machinists pursuant to Appendix "J" of the September 1, 2010 Agreement regarding the assignment of work among machinists on former Conrail properties, such as the Conway Diesel Terminal. The Board finds no evidence establishing that the work assigned to the three PTCS positions awarded to the IBEW-represented employees in June 2013 was performed and generally recognized as machinists' work under the Conrail Classification of Work rule. Award No. 3 of Public Law Board 6353 involves an altogether different set of facts and has no bearing on this dispute.

Finally, the Board has carefully reviewed the numerous statements prepared by shop management and the various Agreement-represented employees with respect to the tasks assigned to the newly created PTCS positions. We find that the employee statements fail to establish the Organization's claim that the work performed by the position incumbents was previously performed by the machinists at the Conway Diesel Terminal by rule or exclusive past practice. The employee statements tend to underscore the roles of the supervisory and quasi-supervisory gang leaders and the tool maintenance and repair work performed by the Machinist Craft Tool Room Attendant. Neither the duties of those positions nor the issue of LMIS system utilization by employees at the shop is at issue here. At issue is the work of controlling tool inventory and distributing parts which the record does not establish has been performed by rule or exclusive past practice by employees of the machinist craft. Indeed, the statement prepared by Assistant Manager Locomotive Shop, R. P. Matuzak reads, in pertinent part:

“The specialty tools that will be placed in the material storage wing under the jurisdiction of the Parts and Tool Control Specials will only be those tools that have historically been spread throughout the shop with no accountability. Therefore, the machinist Tool Room Job still continues to repair tools when broken or damaged in the same manner as it did as before. However, this new process allows for proper tracking of the tools that had not, in the past, been controlled by anyone or any craft.”

Moreover, the statement prepared by Shop Manager Stuart differentiates the duties of the gang leaders and Tool Room Attendant from the PTCS electrician positions established after the institution of the operational changes at the Conway Shop. Shop Manager Stuart's statement reads in pertinent part:

“Employees continue to get the shared tools they need on their own accord, these tools are now located in the new material storage wing. The Parts and Control Tool Specialists do not “hand out” tools but control the accountability of who has the tool or tools by knowing who has checked out the tool. The shared tools are listed below...The majority of these tools are electrical in nature.” (Emphasis added.)

Given our above findings, the Board holds that the record lacks substantial evidence in support of the Organization's claim alleging that the cited provisions of the applicable Schedule Agreement were violated when the Carrier assigned Electrician P. Saunders, in lieu of the Claimant, to perform work reserved exclusively to the machinists' craft at the Conway Diesel Terminal. Hence, the Board rules that the claim requesting eight hours pay at the overtime rate for every day the Carrier assigns employees that are strangers to the machinist craft to work consisting of controlling tool inventory and distributing material/parts necessary in repairing locomotives is denied. The Organization has not demonstrated by substantial evidence that such work was exclusively performed by IAM&AW represented employees.

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 21st day of February 2017.