

Award No. 2315

Docket No. 2141

2-SLSF-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned other than Machinists to remove and apply Jib Crane at its Electric Shop, Springfield, Missouri.
2. That accordingly, Carrier be ordered to discontinue using other than Machinists to perform this work and compensate Machinists F. E. Maples, J. E. Divan and Machinists Helpers Alva E. Bunch and O. C. Smith, hereinafter known as the Claimants, for eight (8) hours pay for November 12, 1951.

EMPLOYEES' STATEMENT OF FACTS: On November 12, 1951, employees of the B&B Department removed a jib crane from machine shop and installed same in the electric shop. This crane was not attached to the building known as the North Shop. It was attached to a post in the electric shop. This work was authorized by C. G. Saurman, assistant car foreman.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective January 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the action of the carrier in the instant dispute is contrary to the provisions of the current agreement, with particular reference to Rules 31(a) and 53, reading in pertinent part as following:

"Rule 31(a)—Except as otherwise provided by the rules of this agreement, none but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

Mr. Steve H. Dean, retired B&B Foreman
Mr. Walter Myers, Machinist
Mr. Richard Pikesley, Machinist
Mr. H. R. Cole, Machinist
Mr. W. J. Ficke, Machinist"

As might be expected in securing statements of this character, there was a lack of uniformity in the evidence obtained from the various employes questioned and in some instances information secured from employes in the Maintenance of Way Department conflicted with information secured from employes in the mechanical department. But in analyzing and summarizing all of the information developed, the following conclusions were drawn by the carrier as concerns the question before this division:

1. That the original installation of jib cranes of all types, when placed in shop buildings in connection with construction of new shops at Springfield, Tulsa, Lindenwood (St. Louis), and East Thomas (Birmingham), was in general made by steel bridge men, assisted in some cases by Division B&B men.

2. After the original installation at the four locations mentioned and the shops were in service, and with few exception, where jib cranes were installed of the post type or type that were supported by a post or column not attached to the building, the installation was made by machinists after the foundations had been poured or placed by B&B men. Where jib cranes were attached to the building such as supporting columns or to a post tied into the building members, generally the installation was made by B&B forces with assistance in some cases from machinists.

Upon the basis of facts and information developed by the aforesaid statements, the carrier's vice president-personnel on May 21, 1954, wrote the two general chairmen, suggesting an appropriate division of work between the two classes or crafts in the manner set out therein.

The general chairman of the machinists' craft rejected that proposal of the carrier and reiterated that any settlement other than that suggested by the employes at conference on March 16, 1954, and previously set out herein, would be unacceptable to that organization.

The carrier has earnestly endeavored to present a complete and accurate record of this dispute as handled on the property and to set forth good and sufficient reasons why the agreement rules as they apply to the particular factual situation do not warrant this division issuing an affirmative or sustaining award. You are respectfully requested to so find.

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.

The parties to said dispute were given due notice of hearing thereon.

The complaint made is that carrier improperly assigned other than machinists to remove and apply a Jib Crane at its Electric Shop, Springfield, Missouri. The relief asked is that carrier be ordered to discontinue this practice and to compensate two named machinists and two named machinist helpers for eight (8) hours at the applicable rate for November 12, 1951.

The facts are that on November 12, 1951, Bridge and Building employes of the carrier removed a Jib Crane from carrier's old North Machine Shop at North Springfield, Missouri, and re-erected it in the Electric Shop at the east end of its Forge Shop building at the same point. The crane was attached to a steel H-beam in the old Machine Shop by eight (8) bolts inserted through holes drilled in flanges of the column. In the new Electric Shop it was supported on a square twelve (12) inch timber post extending from the floor to the bottom of the timber truss and tied into the timber truss not only as a support for the crane but also to steady the truss.

The record discloses that in the past no one class of employes on this carrier has exclusively performed the work of removing or dismantling Jib Cranes and then installing or re-erecting them. Sometimes machinists were used to perform this work and other times it was performed by Bridge and Building employes who are represented by the Brotherhood of Maintenance of Way Employes.

Carrier contends this is a jurisdictional dispute between the International Association of Machinists and the Brotherhood of Maintenance of Way Employes, citing in support thereof the principle taken from Award 5432 of the Third Division to the effect that a jurisdictional dispute exists "when the carrier has not contracted with either of two or more crafts and a dispute arises as to which is entitled to perform the work." That is not the situation here. The organization here representing claimants contends their agreement with the carrier specifically covers the work. Consequently the balance of the quote cited from the foregoing award by carrier has application here. It is as follows:

"Where the Carrier has contracted with one or more parties to a dispute, no jurisdictional question is involved. It is then a matter of contract interpretation for this Board."

Carrier also objects to this Division assuming jurisdiction of the dispute on the grounds that there are other employes represented by the Brotherhood of Maintenance of Way Employes involved in this dispute to whom notice has to be given within the meaning of Section 3, First (j), of the Railway Labor Act. If such notice were served it would serve no useful purpose for this Division does not have jurisdiction to pass upon the question of whether or not employes represented by the Brotherhood of Maintenance of Way Employes have a right thereto under the provisions of their agreement with the carrier. That question can only be determined by the Division of the National Railroad Adjustment Board having jurisdiction of disputes involving employes which that organization represents. We find this contention to be without merit.

Rule 53 of the parties' agreement, relating to "Classification of Work," provides, insofar as here material, that:

"Machinists' work shall consist of * * * assembling, maintaining, dismantling, * * * cranes, hoists, * * * and all other work generally recognized as machinists' work."

Rule 31(a), relating to "Assignment of Work," provides, insofar as here material, that:

"Except as otherwise provided by the rules of this agreement (not important here), none but mechanics * * * regularly employed as such shall do mechanics' work as per special rules of each craft, * * *."

The past practice on this carrier, to which we have already referred, would be controlling here if claimants were depending upon the general language of Rule 53 to the effect that machinists' work shall consist of "all other work generally recognized as machinists' work." If that were true

we could not say they had the exclusive right thereof. But such practice does not control and, in fact is abrogated, when the scope of an agreement specifically gives certain work to the employes covered thereby. That is definitely the situation here. It is difficult to imagine language that would do so more specifically than the language used and hereinbefore quoted.

We hold Rule 53 of the parties' agreement specifically gives to machinists the work of dismantling or removing cranes and then installing or re-erecting them. This would include all types because the rule makes no classification thereof. However, this would not include the work of constructing a foundation therefor which becomes part of the structure in which the crane is located, if one is needed, nor would it cover the work of strengthening a building upon the installation of a crane therein, if such proves to be necessary. That work would undoubtedly belong to B&B employes.

In view of the foregoing, we sustain the claim except that part whereby we are requested to order carrier to quit using others to perform this work. We are without authority to direct carrier as to how it must have its work performed. We can only interpret the agreement covering claimants and find, by reason of the agreement covering them, that they were entitled to perform the work here complained of as having been performed by others and make the carrier compensate them to the extent that it had others perform it. This we have done. Of course, that would continue to be true if the carrier continues the practice.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1956.