

Award No. 2915

Docket No. 2616

2-SP(PL)-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Rules 14(a), 39 and 40 of the (M. of W. Agreement) on February 20, 1956 when it unilaterally assigned the duties of the machinist position held by Machinist R. W. Smilie in its System Maintenance of Way Repair Shop, West Oakland, to a clerk and removed from the Agreement and from Machinist R. W. Smilie, work formerly comprising his position and transferred and assigned such work to a newly created position of Clerk outside the scope of the current collective Agreement.

2. That the work comprising Machinist R. W. Smilie's position prior to February 20, 1956 be restored to the scope and operation of the Machinists' Agreement, and Machinist R. W. Smilie be additionally compensated eight (8) hours at time and one-half rate of pay for February 20, 1956, and for each date thereafter that Clerks or other employees not subject to provisions of Agreement referred to hereinabove are used to perform the machinist work here involved.

EMPLOYEES' STATEMENT OF FACTS: The records indicate the carrier established at West Oakland on October 8, 1936, a System Tool Repair Shop, now known as the System Maintenance of Way Repair Shop. The personnel of this shop when first established consisted of one (1) foreman and nine (9) mechanics who performed the work here involved along with other mechanics work. The mechanics in this shop were what is known as composite mechanics, they performed work of all crafts.

On May 1, 1948, the several organizations comprising System Federation No. 114, entered into an "Agreement Between Southern Pacific Company (Pacific Lines) and its Employees in the Maintenance of Way Department (Work Equipment-Roadway Machines) and (Scales Sub-Departments) Repre-

which is substantiated by his letter of August 20, 1956 (carrier's Exhibit F). Contrary to that contention, comparable duties have been performed at that location by clerks and others since that shop was established in 1936, which fact is confirmed by submissions in Third Division Award 7203, and petitioner's general chairman was acquainted with this practice. He was also reminded that prior to May 1, 1948, the effective date of the current agreement, specific jobs for mechanics were not bulletined in System Maintenance of Way Shop and that Bulletin No. 1, June 5, 1948, was an initial general bulletin grouping general duties of employees under their new classifications only as of May 1, 1948, that it does not support his contention that the duties in question are thereby recognized as the exclusive work of machinists as such duties are neither specified in any rules of the current agreement nor recognized as the exclusive duties of any particular class of employees covered by the current agreement, and that other classes of employees were performing comparable duties at this location both prior to that time and subsequently. Copy of Bulletin No. 1 is submitted herewith as carrier's Exhibit E. Certainly nothing contained in a bulletin issued at local level can modify the agreement between the management and its employees represented by petitioner; more particularly, nothing unilaterally placed in a bulletin by a local officer of the company could modify Rule 40 of the current agreement.

In addition to the foregoing, carrier submits that even if it were conceded there was merit to the claim (carrier does not so concede), it would not be a proper claim for the reason that many awards of this Board have held that the extent of penalty for work lost is the pro rata rate.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore, requests that said claim, if not dismissed, be denied.

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.

This claim is founded on the alleged violation of Rules 14 (a), 39 and 40 of the controlling agreement. Claimants contend that the carrier unilaterally assigned the duties of the machinist position, held by Machinist R. M. Smilie, to a clerk and removed from the agreement work formerly comprising claimant's position and transferred and assigned such work to a newly created position of clerk outside the scope of the machinists' agreement.

Claimant asks that the positions be restored to the scope of the machinists' agreement, and that he be paid additional compensation of eight (8) hours at time and one-half rate of pay for February 20, 1956 and for each date thereafter that clerks or other employees not subject to the provisions of the machinists' agreement were used to perform the work here involved.

The work in question was performed in the Maintenance of Way Repair Shops, West Oakland, California and is described as: "obtaining, checking, receiving and shipping of machine parts and supplies, and any other general machinist work."

Claimant held the position, and performed the work described, until he was removed therefrom on January 20, 1956. The work was assigned to a clerk, under the scope rule of the Brotherhood of Railway and Steamship Clerks' agreement, as a result of Award 7203 of the Third Division of the National Railroad Adjustment Board. In that award the Board said:

"If the duties of ordering parts and materials are merely incidental to the position of machinist, they would, and could be performed by them individually at all times under normal conditions. When all employees classified as machinists do not perform a particular function and the said function (in its sum total) is performed by one individual, it ceases to be a function that is incidental to the position, as here used and applied."

The work herein claimed was performed by a machinist many years before the agreement was consummated, yet such work was not included in any rule.

In Second Division in Award 2372 the Board said in part as follows:

"Under the situation here existing, a practice cannot overcome the definite and unambiguous provisions of the rule."

There is nothing in Rule 40 that refers to the work here under discussion, except as may be inferred from "and all other work generally recognized as machinists' work." We do not find that "the obtaining, checking, receiving and shipping of machine parts and supplies" to be generally recognized as machinists work. The fact that one machinist, as part of his assignment, performed this work does not establish a precedent that it is the work of the class or craft of machinists.

There is nothing in the record to substantiate the claim that the clerk referred to herein is performing "any other general machinist work."

We hold the carrier did not violate Rules 14(a), 39 or 40 of the controlling agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2914 AND 2915.

The findings upon which Awards Nos. 2914 and 2915 are based, ignore the evidence of record and the existing agreement governing the employment of machinists.

The agreement in effect between the parties was violated by the transfer of this work from the machinists to the clerks.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner