

Award No. 3902

Docket No. 3744

2-SP(PL)-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O.
(Machinists)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated and continues to violate Rules of the Motive Power and Car Departments Agreement, effective April 16, 1942, as subsequently amended, when it assigned Machinist Helpers' work, and duties incidental thereto, to a Stores Department Fork Lift Operator, an employe not subject to any provision of the current agreement, to assist Machinists in lifting and placing unfinished car wheel axles on lathe attached racks in preparation for machining purposes, and later lifting and removing the finished axles from lathe racks to floor racks, is improper, is in violation of the collective bargaining contract.

2. That accordingly the involved Machinist Helpers' work shall be restored to the scope and operation of the current agreement, and the Carrier be ordered to additionally compensate Machinist Helpers Juan Baca, Janie P. Richardson, Jimmie Hudson, Cresencio Ramirez, Andria Radman, Millard E. Lamirand and Jose Zuniga, (hereinafter referred to as claimants), in the amount of eight (8) hours at the straight time rate for April 27, 1959, and for each and every date thereafter until the agreement violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Stores Department Fork Lift Operator Victor Riolo, assigned by the carrier to assist machinists in performance of machinist helpers' duties referred to above, holds no service rights under the controlling agreement, is not subject to any of the terms of said agreement.

Machinist helpers are subject to and covered by provisions of the current controlling agreement applicable to the machinists' craft, have fixed negotiated seniority and other service rights under the terms of said agreement, including the contractual right to assist machinists. (emphasis ours)

CONCLUSION

Carrier submits that the within claim is improperly before this Division for the reasons set forth herein and the claim should be dismissed. However, in the event the Division elects to assume jurisdiction, it is the carrier's position that (1) it has clearly shown that the claim is entirely lacking in support by either agreement or practice, (2) if considered in any manner meritorious, with which the carrier does not agree, it does not justify any monetary claims, and (3) being entirely lacking in merit, if not dismissed should 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.

Parties to said dispute waived right of appearance at hearing thereon.

The claim arises in connection with the use of stores department employes operating lift trucks for the purpose of transporting car wheel axles to a gravity feed rack for processing in the automatic lathe and for transporting them from the lifts as well.

Prior to April 6, 1959, car wheel axles after being demounted and cleaned were placed at a point removed from the lathe and by means of small hoists were placed in the manually operated lathes by machinists and helpers. The factual difference between the present operation and that which previously obtained is that the stores department employes now place these axles in the rack which feeds the lathe. Although the helpers did not do this exact work (conditions having changed) it is very similar to work which was formerly performed by helpers. It is also similar to work which the stores employes did. It is however more proximate in space to machinist work than before and the question is whether it is an invalid invasion of an area which belongs to the helpers.

The rules relied on in addition to the scope rule are Rules 50 and 58 which recognize the work of the helper and which create an area, so it is argued, within the motive power department where helpers may demand recognition and may exclude others.

Considering the cited rules in a light most favorable to the claim we are constrained to hold that they do not create a preserve in the proximity of the lathe within which a stores department employe may not encroach.

Considered from the standpoint of the nature of the work it must be concluded that there has not been any substantial change. The stores department employes operated in this area before. They brought the axles to a central point from which they were hoisted by the helpers. Under the present arrangement they retain control for a longer time but the difference is one of degree and not a difference in character of work. Compare Second Division Awards 3189 and 3246.

We conclude that the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1961.

LABOR MEMBERS DISSENT TO AWARD NO. 3902

Prior to April 6, 1959 machinist helpers performed the instant work and there is no evidence of any negotiation authorizing a change; therefore the claim should have been sustained.

The current agreement governing employment of machinist helpers recognizes and preserves the rules governing seniority, rates of pay, assignment of work and the working conditions of the claimants and stands as a protest against the majority's refusal to enforce the controlling agreement.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink