

Award No. 3992
Docket No. 3742
2-SP(PL)-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement the assignment of a Stores Department Fork Lift Operator—represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees—eight (8) hours each date during the period April 13 to 17 inclusive, 1959, 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 agreement.

2—That accordingly the Carrier be ordered to additionally compensate Machinist Helpers Millard E. Lamirand, Jose P. Zuniga, Juan Baca, Janie P. Richardson and Jimmie Hudson, (hereinafter referred to as claimants), in the amount of eight (8) hours each at the straight time rate of pay, account the improper assignment of an employe not subject to the terms of the current agreement to perform Machinist Helpers' work, assisting machinists during the period referred to hereinabove.

EMPLOYEES' 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.

Machinists 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)

This dispute was handled from bottom to top with all carrier representatives designated to handle such matters, with the result no adjustment could be effected on the property.

2569, 2845, 3015, Third Division Awards Nos. 2436, 5404, 5702, 5803, 6758, 7076 and many others of the same import.

CONCLUSION: Carrier submits that before any consideration can be given the within claim that it is mandatory to furnish other carrier's employes who have a real interest in the outcome of those proceedings, notice of its pendency. 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.

This case arises out of the claim of five Machinist Helpers that a Store Department Fork Lift Operator represented by the Brotherhood of Railway and Steamship Clerks was improperly assigned by the Carrier to handle car wheel axles at its Sacramento (California) General Shops during the period from April 13 through April 17, 1959.

The same factual situation involving the same parties was submitted to us for decision in Docket 3744, except that claim was made for a different period and that there were two additional Claimants who are not parties to this case. In the prior case, the Claimants also relied on the same Rules of the applicable labor agreement as they do here. We denied their Claim in Award 3902.

We are aware of the fact that prior Awards of this or any other Division of this Board are not binding upon us in the same sense that authoritative legal decisions are. Nevertheless, all Divisions of this Board have consistently held that, if a dispute involves the same controlling facts and the same contractual provisions as were submitted for adjudication in a previous dispute, the Award in the prior case will generally be followed, except when such Award is shown to be glaringly erroneous or substantially unfair. See: Awards 15921 and 17780 of the First Division; 2471 and 3023 of the Second Division; 6784, 6833, and 6935 of the Third Division; 506, 793, 993, and 1277 of the Fourth Division. The rationale underlying those rulings is that in the interest of stable and satisfactory labor relations identical rules must necessarily be given like interpretations. Otherwise, employes doing the same work and covered by the same labor agreement would not be afforded the benefit of equal treatment and equal protection under the law. Moreover, general adherence to previous rulings, except where deviation therefrom is warranted on the basis of the above indicated exceptions, signifies that our rulings are based on reason and intended to exclude further litigation. They are not merely random judgments indefinitely inviting further litigation. See: Shulman, **Reason, Contract, and Law in Labor Relations**, 68 Harvard Law Review 999, 1020 (1954-55).

We have carefully re-examined our prior Award 3902 in the light of the above outlined principle but have found nothing in the record before us which would justify a different ruling. Accordingly, we adhere to said Award for the reasons stated therein.

AWARD

Claim denied.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1962.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3991, 3992, 3993

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.

Prior to April 6, 1959 machinist helpers performed the instant work provided in Rule 58, which reads in part as follows:

"Helpers' work shall consist of * * * and all other work generally recognized as helpers' work."

and there is no evidence of any negotiation authorizing a change; therefore the claim should have been sustained.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink