Award No. 4077

Docket No. 3921

2-MP-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (MACHINISTS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Missouri Pacific Railroad Company improperly assigned other than machinists to make repairs to diesel clamshell X-1034 at the Kansas City, Missouri shop on Monday, January 4, 1960.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinists F. C. Davis and R. W. Marye in the amount of four (4) hours each at the punitive rate for this date (January 4, 1960).

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a diesel shop employing some 135 machinists at Kansas City, Missouri.

On Monday, January 4, 1960, it was found that new cables were needed on the bucket of diesel clamshell X-1034. This clamshell was at the car department track next to the wrecker spur, which is approximately 100 feet from point where machinist is employed for the purpose of making such repairs.

Machinists F. C. Davis and R. W. Marye, hereinafter referred to as the claimants, were available to perform this work, and inasmuch as this is work belonging to the machinists' craft, the carrier violated the agreement when it permitted maintenance of way truck driver Clyde Raines and three (3) other maintenance of way employes to perform this work.

This matter has been handled up to and including the highest designated officer of the carrier who has refused to adjust it.

The Agreement of September 1, 1949, as subsequently amended, is controlling.

place of employment in the mechanical facilities and go out into the train yard. This claim must be denied on its merits. In any event, the penalty claim must 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 were given due notice of hearing thereon.

In this case a cable to the bucket of a diesel clamshell was replaced by several Maintenance of Way employes, including (according to carrier) the clamshell operator and (according to carrier) a motor car repairman. (Petitioner contends that the latter was a truck driver.) The clamshell at that time was in carrier's Kansas City yards about 100 feet from the car repair facility, where a machinist was at work.

Petitioner, in arguing that said service belonged to machinists, cites Rules 52(a) and (c), plus a letter from carrier's chief mechanical officer and assistant general manager to the general chairman confirming an agreement reached among the three on August 1, 1938.

Rule 52(a) definitely categorizes the repair and maintenance of cranes and hoists as machinists' work. However, the provisions of Rule 52(c), as well as of the 1938 letter, make it clear that the parties did not intend to give said service exclusively to employes in said craft, for said agreements say in substance that clamshell operators and operatives of other maintenance of way equipment may repair such equipment when same has not been "moved to or working in shop points."

No other exceptions than the above-summarized and quoted language of Rule 52(c) and the 1938 understanding have been called to the Division's attention. Then the determination of the instant dispute must follow from an application of said exception to the instant facts.

Petitioner contends that the exception applies only to clamshell repair work done out on line of road. That is, petitioner argues in effect that the whole of carrier's Kansas City yard facilities, where there are maintenance of equipment repair shops, comes within the intended meaning of "shop points"; and the exclusion therefore does not apply.

The Division is forced to question this position. It appears that "shop points" is in itself a somewhat ambiguous phrase. The parties could have avoided ambiguity by restricting the exception through use of some such words as "when such equipment is out on line of road" or "this exception not to apply when such equipment is working in yards where maintenance of equipment repair shops are located." But the parties did not so clarify their intention, and this Division is not empowered to do so under the guise of interpretation. The words, "shop points," must be held to be ambiguous.

Given this conclusion, past practice may properly be considered. On this the Division is compelled to find that petitioner has failed to present persua-

sive evidence that its interpretation of "shop points" is the one intended by the parties. Accordingly, the claim must fail.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4077

The majority admit that the repairs to the clamshell was made by Maintenance of Way employes only one hundred feet from car repair facility, where a machinist was at work; it also admits that Rule 52 (a) includes the repair and maintenance of cranes and hoists as machinists' work.

There is no ambiguity here — it then departs from logic and reason and attaches an application to the 1938 Letter of Understanding which is erroneous and was never the intent of practical railroad understandings or negotiations — the word **exclusively** does not appear in the agreement, or in the 1938 Letter of Understanding, therefore it cannot be validly used to excuse the majority's determination.

The majority's conclusion that:

> "The Division is forced to question this position. It appears that 'shop points' is in itself a somewhat ambiguous phrase. The parties could have avoided ambiguity by restricting the exception through use of some such words as 'when such equipment is out on line of road' or 'this exception not to apply when such equipment is working in yards where maintenance of equipment repair shops are located.' But the parties did not so clarify their intention, and this Division is not empowered to do so under the guise of interpretation. The words, **'shop points,'** must be held to be ambiguous."
> (Emphasis ours.)

is erroneous.

The common railroad term **shop point** is nothing new and is referred to in the agreement many times under various rules in the determination of seniority points, road trip rules, travel expense, relief rules, transfer rules, etc. Ambiguity does not exist here — the rules and the facts of this record are crystal clear, since shop yards and locations are as much a part of shop points as the buildings themselves. The majority is in error and we dissent.

C. E. Bagwell
T. E. Losey
E. J. McDermott
R. E. Stenzinger
James B. Zink