

Award No. 4078

Docket No. 3924

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 EMPLOYEES' DEPARTMENT, A. F. of L. — C. I. O. (MACHINISTS)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

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 Wednesday, January 6, 1960.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist C. T. Grisby in the amount of four (4) hours at the punitive rate for this date (January 6, 1960).

EMPLOYEES' 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 Wednesday, January 6, 1960, it was found that diesel clamshell X-1034, which was located just outside the diesel shop, had a defective pump. Instead of calling a machinist to perform this work, maintenance of way truck driver Clyde Raines removed the fuel pump on clamshell X-1034, went to town and purchased a new one, returned to the property and applied the pump and cleaned all the fuel filters.

Machinist C. T. Grisby, hereinafter referred to as the claimant, was available to perform this work and inasmuch as this is work belonging to the machinists' craft the carrier violated the agreement when it permitted a maintenance of way employe 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.

it had stopped in the train yard. The shop craft agreement applies only to those employes who perform the work specified in said agreement in the maintenance of equipment department. The work in controversy was not performed in the maintenance of equipment department. Therefore, the work in controversy is not covered by the shop craft agreement. Furthermore, Rule 52 (c) recognizes the limited nature of the agreement by providing that operators of clamshells may make repairs to such equipment as they are qualified to perform while away from back shops. Since there is no back shop at Kansas City, Rule 52 (c) specifically recognizes that the machinists in the locomotive department had no contractual right to the light repair work in controversy. The shop craft agreement does not give a machinist a contractual right to work which requires him to leave his normal place of employment in the diesel facility and go out into the train yard to perform work on a clamshell in another department which the operator with the assistance of a mechanic in that department are perfectly capable of performing and have every right to perform. 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.

Here a fuel pump was removed and replaced and the fuel filters cleaned on a diesel clamshell by Maintenance of Way employes (operator and mechanic) when same was located some 600 feet from carrier's diesel repair shop in the Kansas City Train Yard, where machinists were on duty.

These facts, plus the almost identical contentions of the parties (and their omissions), make it clear that in essence the instant case is on all fours with that presented in Docket 3921 and decided in Award 4077. Accordingly, a denial award is required here also.

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. 4078

The majority admit that the repairs to the clamshell was made by Maintenance of Way employes only six 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 attach 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