Award No. 4125

Docket No. 4039

2-L&N-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the L & N Railroad Company, hereinafter referred to as the Carrier, violated, (1) Rule 57 of the Agreement, (2) No-transfer of work Understanding, (3), Safety Rules and (4) Long established past practices, when it abolished three (3) Crane-Rigging positions and turned the duties thereof over to other than machinist-helpers to perform the work.

(b) That the Carrier be ordered to pay the Machinist-Helpers, hereinafter referred to as the Claimants, at the applicable straight time rate for twenty-four (24) hours per day, beginning May 23, 1960, and continuing until settlement is reached.

(c) That the Carrier be ordered to restore the work herein involved to the machinist-helpers.

EMPLOYES' STATEMENT OF FACTS: In Shop 1, at the carrier's South Louisville, Kentucky shops, there are two (2) overhead cranes. One (1) is of two hundred (200) tons capacity and the other of ten (10) tons capacity, both of which have been regularly operated for thirty (30) years or more, and a full-time crane-rigger has likewise been regularly assigned to these cranes, one (1) on first shift and one (1) on second shift, Monday through Friday.

These crane-rigging positions were always advertised by bulletin and the senior machinist-helper to bid was awarded the position.

The third overhead crane involved in this dispute is located in what was formerly the L & N foundry. Some fifteen (15) years ago, the foundry was converted to a Diesel parts repair shop and identified as Shop 17. This overhead crane, has, since that time, operated on a full time basis, first shift Monday through Friday, and the crane-rigging position was filled in exactly

There is nothing in the foregoing rule which sets out that the "hooking on" to a crane is work confined to machinist helpers. There may have been a situation existing which would justify assigning a helper to these duties. However, because of reduction in force and for other reasons it was no longer considered necessary to use a helper to perform work which under the agreement could be performed by a machinist. A "helper" is what the term implies; in this instance, an individual assigned to relieve a machinist of certain of his duties. There is nothing in the agreement which prevents carrier from assigning to a machinist duties which properly may be required of him. In these circumstances, therefore, the claim of the employes is without merit and 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 were given due notice of hearing thereon.

It is admitted that crane-rigging in the car and blacksmith departments has been done, not by machinists or machinist-helpers, but by various crafts incidentally to their work. Crane-rigging is not mentioned in the Classification of Work Rules, but it is contended that since for many years crane-rigging in Shop I and Diesel Repair Shop have been done by machinist-helpers, it is therefore included in the catch-all clause in Rule 57, the Machinist Helpers' Classification of Work Rule, as "work generally recognized as helpers' work."

Under these circumstances crane-rigging cannot be considered as belonging exclusively to the machinists' craft; and even if expressly mentioned in the helpers' classification of work rule it could not be considered as belonging to helpers, to the exclusion of higher rated employes in their craft. That principle is of long standing under these and similar rules, and has been pronounced by Award 1380, rendered by this Division without a referee, and by Awards 1636, 2623, 2654, 3211, 3263, 3495, 3603, 3617, 3643, 3751, 3801, 3835, and at least 22 others, with twelve different referees, 14 of those awards upon this same property and under the same rules.

For these reasons, and since there was no jurisdictional dispute between crafts, the "no transfer of work understanding" was not violated.

The record contains no evidence that by this incident the carrier violated its own unilateral safety rules, which however, does not appear to be a matter within the jurisdiction of this Board to consider.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4125

The majority is in gross error in Award No. 4125 in holding that " * * * and even if expressly mentioned in the helpers' classification rule it could not be considered as belonging to helpers, to the exclusion of higher rated employes in thir craft. * * * "

The agreement is for the purpose of protecting the rights of employes subject thereto and holding that the express terms of an agreement can be disregarded negates the fundamental principles underlying collective bargaining.

The Board should have ordered the carrier to restore the work to machinist helpers.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink