

Award No. 4725

Docket No. 4630

2-SP(PL)-MA-'65

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. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier's assignment of Bridge and Building Mechanics, who are represented by the Brotherhood of Maintenance of Way Employees (hereinafter referred to as Maintenance of Way Employees), eight (8) hours each date, December 7-10, 1962, to set-up, adjust, level and secure to cement floor by anchor bolts (install) Wadkins Cut-Off Saw #2490 at Carrier's Dallas Street Light Rip Track, in Car Department at El Paso, Texas, was improper, in violation of the collective bargaining contract.

2. That accordingly, the Carrier be ordered to additionally compensate Machinists D. E. Delaney, A. L. Rodriguez and H. P. Sanders (hereinafter referred to as claimants), in the amount of eight (8) hours each at the pro rata rate of pay, for each date of December 7-10, 1962, account Carrier depriving claimants and other employees of like classification subject to the terms of the parties contract the contractual right to perform the work here involved coming within the Scope of said contract, when the work referred to hereinabove was assigned to, and was performed by Maintenance of Way Employees, not subject to any terms of the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: The work here involved has been properly recognized by practice and stipulated agreement provisions since effective date of the current agreement, as work coming within the purview of the said agreement, to be performed by Machinists subject thereto. There is no dispute in the record regarding this fact.

It is an established fact, not subject to dispute, that in recognition of specific provisions of the controlling agreement, it has been a consistent accepted practice for machinists subject to the terms of said agreement, to perform the work involved in this dispute—installation of shop machinery—in all shops and departments of the carrier at El Paso, Texas, including at other points throughout the system. This fact not subject to dispute.

During the month of November and early part of December 1962 the carrier constructed a new woodworking shop at the Dallas Street Light Rip

Statement of Facts," the superintendent of motive power, Eastern District, had jurisdiction over the mechanical department of said district, which included the Tucson and Rio Grande Divisions and El Paso General Shops. However, the direct jurisdiction of said divisions was under master mechanic on each division specified, including both locomotive and car departments on each Division, respectively.

Therefore, direct Mechanical Department operations of the former General Shops at El Paso prior to 1954 was under the superintendent, motive power, eastern district, and the direct jurisdiction of mechanical department operations on the Rio Grande Division, including El Paso, was under the jurisdiction of a master mechanic. Subsequent to June 1954, both the former general shops and division operations at El Paso were under the jurisdiction of the master mechanic of the Rio Grande Division.

Under the foregoing facts, which are a matter of record, the endeavor by petitioner's representative to imply the work involved developed upon former general shops machinists on the incorrect allegation that the division car department facilities were a part of the former general shops operations or under the direct jurisdiction of the former superintendent, motive power, is entirely without merit.

It is a principle too well established by all divisions of this board to warrant citation that the burden of proving a disputed contention rests upon the party who relies upon it to maintain its position. This petitioner has failed to do, and consistent with those awards, the within claim must fail.

CONCLUSION: Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it 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 employees 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.

On behalf of the Carrier it is argued that, strictly construed, the machinists' classification of work rule (Rule 57) does not extend to the "building, assembling, maintaining, dismantling and installing" of the various items of machinery and equipment named, including shop machinery, but only to the stated operations on metals used in those activities.

The contention must be rejected; for it has been repeatedly held by this Division,—the first time without a referee,—that rules identical with or substantially similar to Rule 57 confer upon machinists all of said activities. Awards Nos. 170, 726, 1874, 2315, 3657 and 4547. See also Third Division Award No. 8461.

This claim differs from that in Award 4724 in that the work covered by the agreement in that case was only that of the Work Equipment—Roadway Machines and Scales Sub-Departments of the Maintenance of Way De-

partment, whereas this Agreement relates to the Motive Power and Car Departments, also called the Mechanical Department, which includes car repair shop operations.

This case is similar to the one involved in Award No. 4547, in that it also concerns the installation at the light rip track, a car repair facility, of shop machinery theretofore used in the shops of the Motive Power and Car Departments for like work. Claim 1 must therefore be sustained.

The record shows without dispute that the work in question totalled twelve hours on December 7th and twelve hours on December 10th, 1962. It does not disclose whether or to what extent the three claimants named were available and entitled to this work on the days named.

AWARD

Claim 1 sustained.

Claim 2 sustained to the extent to which the claimants named, or any of them, were available and entitled to the work in question on December 7th and December 10th, 1962, and is remanded to the property for determination of the amounts due them, if any.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.