



Award No. 4990

Docket No. 4791

2-SP(PL)-MA-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1 - That under the current Agreement Carrier's assignment of various employees and Supervisors represented by the Brotherhood of Maintenance of Way Employees (hereinafter referred to as M of W Employees) to perform motor car mechanics'-machinists-work repairing Ribbon Rail Welder SPO-100 at Tracy, California on the dates of October 19, 21, 22, 24, 28, 29, November 2, 4, 6, 7, 8 and 9, 1963, was improper, in violation of the collective bargaining contract.

2 - That accordingly, the Carrier be ordered to additionally compensate Motor Car Mechanics D. M. Massey and C. Henrich (hereinafter referred to as claimants), in the amount of forty-eight (48) hours each at the pro rata rate of pay, account Carrier depriving claimants and other employees of like classification subject to the terms of the parties negotiated contract, their contractual right to perform the work here involved coming within the Scope of said contract, and intendment of the signatories thereto, when the work referred to hereinabove, was assigned to, and performed by M of W Employees and their Supervisors, not subject to any terms of the collective Agreement.

EMPLOYEES' STATEMENT OF FACTS: The work here involved has been properly recognized by practice and stipulated agreement provisions since the effective date of the current agreement, and establishment of the involved Ribbon Rail Welding Facility at Tracy, California, including establishment of like facilities at other points, as work coming within the purview of said agreement, to be performed by motor car mechanics — machinists — subject thereto. No argument to the contrary can be upheld.

Carrier has clearly demonstrated hereinabove that claimants, motor car mechanics, performed all work of their class on dates in question and that the duties performed by MofW employes on cited dates are not allocated to motor car mechanics under any understanding, practice or agreement.

Without prejudice to the foregoing, carrier directs attention to the fact that the excessiveness of the instant claim was pointed out to petitioner's representatives throughout the handling on the property. However, the organization has not presented one iota of evidence to substantiate its claim for time for each date, or for that matter to establish that any work was performed on October 21, 29 [A] and November 4, 1963 as alleged.

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 claim must fail.

CONCLUSION.

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that if not dismissed, 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 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.

Claimants contend that Carrier has assigned various employes and Supervisors represented by the Brotherhood of Maintenance of Way Employes (MofW employes) to perform motor car mechanics' work in repairing a Ribbon Rail Welder at Tracy, California, on certain dates between October 19 and November 9, 1963, in violation of the collective bargaining Agreement between the Carrier and Petitioner.

Carrier contends that the work done by M of W employes at Tracy was not in the repair of the Ribbon Rail Welder and was not the exclusive work of Motor Car Mechanics by Agreement nor by practice; that after the particular welder involved herein was put in operation, the actual mechanical repairs to the welder were performed by Motor Car Mechanics but repairs to the track car on which the rail welder was bound were performed by other than the members of their craft; that the M of W employes at Tracy engaged in their work, in connection with rail renewing programs, furnished Motor Car Mechanics with competent help when necessary, in accordance with a long established practice and controlling agreement provisions.

Carrier further contends that its work record for the period from October to November 9, 1963, at Tracy, disclosed that, in each instance cited, the actual mechanical repairs required to the welder were performed by the

Claimants, the M of W employes merely providing necessary competent help and safety watching of operating control console, as required; that any other work performed by M of W employes was work that had never been reserved to Motor Car Mechanics by any understanding, practice or agreement; that on two of the dates set forth by the Claimants no work was done at all.

This Board has repeatedly held that in presenting a claim, the Petitioner has the burden of proving the work complained of was exclusively assigned to or reserved to the Claimants by Agreement or by custom, tradition and practice. This Petitioner has failed to meet this burden. To the contrary it appears from the record that the work performed on the days complained of was properly the work of M of W employes. Certainly the language of Article 40 of the Agreement on which Petitioners place reliance does not give the right to do this work exclusively to Motor Car Mechanics. See Award No. 4517 - (Seidenberg) which is controlling on this property.

In the light of the entire record in this case, the Board is unable to sustain the claim and must deny it. See also Award No. 4292 - (McDonald); Award No. 4724 - (Johnson).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.