Award No. 5050
Docket No. 4864
2-PRR-MA-'67

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. 152, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement by assigning machinist craft work to an electrical craft employe at Buttonwood, Pennsylvania.

2. That the Carrier be required to compensate Machinist C. H. Auker for eight (8) hours' pay, at the applicable rate, for January 12, 1963, and eight (8) hours' pay for each day thereafter until settlement of this claim. This is a continuing claim under the provisions of Rule 4-0-1 of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to January 12, 1963, claimant was employed by the carrier and regularly assigned as a machinist at Buttonwood, Pa. At that time, the remainder of the force at Buttonwood included, among others, one other machinist, L. S. Cornell, and an electrician, E. M. Saxton. Both machinist positions, along with the electrician position, were assigned to the first trick, with each craft performing its own work, including overtime work.

On January 4, 1963, the carrier's foreman at Buttonwood began a move intended to completely rearrange the machinist craft and electrical craft forces at that point, resulting in the elimination of one of the machinist positions, and the assignment of machinist craft work to the electrician.

First, he abolished claimant's machinist position outright, the abolishment to become effective with the close of his tour of duty on January 9, 1963.

Second, he abolished the other first trick machinist position, held by L. S. Cornell, and readvertised it on the second trick as a position of lead machinist, the award and the abolishment to become effective concurrently. L. S. Cornell being the senior machinist of the two machinist craft employes, he was awarded this position and claimant was furloughed from the machinist craft at that point.

III. **Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreements And To Decide The Present Dispute In Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreements, which constitute the applicable agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to them. To grant the claim of the employes in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The board has no jurisdiction or authority to take any such action.

CONCLUSION: The carrier has shown that the rules agreement was not violated and that the claimants are not entitled to the compensation claimed.

Therefore, the carrier respectfully submits that your honorable board should deny the claim of the employes in this matter.

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 waived right of appearance at hearing thereon.

The claim is that the Carrier violated the Agreement by assigning machinist craft work to an electrical craft employee at Buttonwood, Pennsylvania.

Until January 12, 1963, the Carrier's work force at Buttonwood Engine House consisted of an electrician, a laborer and two machinists, of whom Claimant was one. The force was then rearranged. Claimant's position was abolished and his work was assigned to the electrician; Claimant used his seniority to take the laborer's position.

The Employees contend that by this action the Carrier violated Articles II and X of the Scope Agreement effective October 15, 1960. Article X is the work classification rule of the machinists; Article II provides that qualified employees of the respective crafts "shall be used to perform the work specified, except as otherwise provided in this agreement."

The Carrier's position is that it is "otherwise provided" by Rule 5-F-2, which is as follows:

> "5-F-2 (Effective 10-15-69) (a) At outlying points where there is not sufficient work to justify employing a Mechanic of each craft, the Mechanic or Mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.
>
> "An 'outlying point' as that term is used in the foregoing paragraph is understood to mean a minor inspection or repair facility (enginehouse or car shop) where the total number of regularly assigned position excluding relief positions covered by the System Federation and Transport Workers Union schedule agreements does not exceed 10 mechanics or 15 employes."

Thus, "outlying point," as used in Rule 5-F-2 is any "minor inspection or repair facility," such as an engine house or car shop, where the number of regularly assigned positions does not exceed the numbers stated. Two points should be noted: first, that the rule does not require that the outlying point be an engine house or car shop, but only that it be a "minor inspection or repair facility"; second, that the rule does not require that the minor inspection or repair facility be any certain distance from other facilities of the Carrier. But as Referee Robertson pointed out in Decision No. 92-65 of the PRR-TWU System Board of Adjustment, Docket No. 120, the clear intent was that it be not only separate in designation but in physical fact; for otherwise mechanics of the various crafts might in fact be readily available, even though not actually assigned to the inspection or repair facility in point.

The Employes' first contention is that no such installation or edifice as an engine house or car shop actually exists at Buttonwood; — that "they are merely separate sections of track within the Buttonwood facility (itself a minor inspection and repair facility) where locomotives and cars, respectively are inspected and repaired."

Thus the Employes affirmatively state that the "Buttonwood Engine House and the "Buttonwood Car Shop" are separate and that each of them is a minor inspection and repair facility; — one for locomotives and the other for cars; but that there is actually no enginehouse or shop building or inclosure. However, the record shows that on the Carrier's system there are at least twelve minor inspection and repair facilities which are considered by the parties and designated in bulletins as engine houses, and at least seven such facilities likewise known and designated as car shops, but which consist merely of "separate sections of track" without roofs or housing. Furthermore, as above noted, the Rule does not provide that an outlying point actually be an "engine house or car shop"; it requires only that it be a "minor inspection or repair facility," adding, by way of example and in parentheses "(engine house or car shop)".

Since thus, as quoted above, the Employees state unequivocally that Buttonwood Engine House and Car Shop are "**separate** sections of track *** where locomotives and cars, respectfully, are **inspected and repaired,**" each of them is admittedly "a minor inspection or repair facility."

The Employes' second contention is that Buttonwood Engine House is not iself an outlying point, but with the Car Shop and the CT Yards comprises

the Buttonwood facility, with more than ten mechanics and fifteen employes.

This involves what the Carrier calls "the second condition specified in the rule; namely, that contained in the conditional phrase limiting the outlying points at which a mechanic of one craft may perform work of any craft to those outlying points "where there is not sufficient work to justify employing a mechanic of each craft! ***."

Concerning it the Carrier states in its Submission:

> "In view of the language of the conditional phrase quoted above, the sole question then to be resolved as to such phrase is whether there was sufficient work **at the point involved in this dispute** to justify mechanics or a mechanic of each craft being employed." (Emphasis added).

In other words, what is the "point" here involved, — Buttonwood Engine House or Buttonwood?

In the System Board Award, Decision No. 92-65, above cited, the Engine House and Car Shop, as here, were separate minor inspection and repair facilities. As Referee Robertson there noted, the Engine House was only 200 feet from the Car Shop, with the Foreman's office betwen them and only 41 feet away; and since the intent of the rule was to obviate the necessity for all crafts of mechanics at points where the amount of work did not justify their employment, the entire inspection and repair facility physically present and available should be included to determine whether the facility was within the definition.

Here, likewise, the Engine House and Car Shop are separate inspection and repair facilities under the supervision of the Motive Power Foreman, — one for locomotives and one for engines; but they are a half mile apart. The question presented is whether in view of this greater physical separation the Engine House constitutes a separate point or merely part of the Buttonwood point, in order to determine whether it comes within the definition of "outlying point," as limited by the number of regularly assigned positions.

Here the distance between the separate locomotive and car inspection repair facilities is a half mile instead of 200 feet, as in System Board Opinion No. 92-65. The difference is quite substantial; a half mile is about thirteen times as far as 200 feet. But without regard to the availability of transportation facilities and in terms of a walking speed of only three or four miles per hour, they are nevertheless only eight or ten minutes apart, even if the CT Yard does not lie between, so that a mechanic at either is readily available for work at the other. Consequently, on the basis of the test propounded by the Carrier "whether there is sufficient work **at the point involved in this dispute,**" we must consider Buttonwood as "the point involved," and the Engine House as only part of it.

Without reference to the other issues presented, Claim 1 must be sustained, and Claimant should be compensated for all time lost because of his furlough, less pay actually received from the Carrier or in other employment.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 5050

In its Award the Board finds, based on an affirmative contention by the Employes, that Buttonwood Enginehouse and Buttonwood Car Shop are **each** "a minor inspection or repair facility." This finding alone required an outright denial of the claim.

However, from that point the Award of the Board wanders to an indefinite discussion of what constitutes an entire inspection and repair "facility" and what should be included to determine whether the "facility" was within the definition of an outlying point under Rule 5-F.2.

To reach its conclusion as to what constitutes the inspection and repair facility at this particular point, the Board embarks on a discussion of the "physical separation" between Buttonwood Enginehouse and Buttonwood Car Shop. The Board confines its discussion of "physical separation" to the enginehouse and car shop at Buttonwood, as was done in Decision No. 92 - 65, referred to in the Award, and concludes that they should be treated as one facility, even though they were in fact half a mile apart. The easy walking distance referred to is wholly specious from the practical point of view. However, the Board apparently reaches the conclusion that the enginehouse and car shop were the inspection and repair facilities which were considered in the final determination as to what was to be considered as the "outlying point" in this dispute.

The total number of regularly assigned mechanics at the enginehouse and car shop **combined** on and after January 12, 1963, was only eight (8), clearly meeting the definition set forth in Rule 5-F-2. Even on this basis a denial award was required.

Any inclusion of the CT Yard in the consideration of the case is wholly irrelevant as this is not functionally a part of the inspection and repair facilities at Buttonwood.

The findings of the Board required a denial award in this case and for this reason we dissent.

F. F. M. Braidwood
F. P. Butler
H. K. Hagerman
P. R. Humphreys
C. L. Melberg

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.