Award No. 5527
Docket No. 5353
2-WM-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the agreement when they assigned other than Machinists' Helpers to oil and grease Gantry cranes 71, 72, 91 and 92 at the Merchandise Pier on December 1, 1965.

2. That the following Machinists' Helpers, be compensated at eight (8) hours at pro rata rate for aforesaid violation.

1. C. F. Pleines
2. J. Rennie
3. H. Hurt

EMPLOYES' STATEMENT OF FACTS: Machinists' Helpers C. F. Pleines, J. Rennie and H. Hurt, hereinafter referred to as Claimants, are employed by the Western Maryland Railway Company, hereinafter referred to as the Carrier, at Baltimore, Maryland, with the duties of helping Machinists in the repair and maintenance of the cranes on the piers — principally that of oiling the crane machinery.

1. Claimant C. Pleines was assigned to oil and grease cranes at the Merchandise Pier from 1955 until October 1962, as shown in Exhibit A.

2. Claimant H. Hurt was assigned to oil and grease the above cranes from October, 1962 to December 1, 1965 as shown in Exhibit A.

3. Machinists Helper W. Young was used to fill vacations and assist Claimant H. Hurt in the performance of this work, also shown in Exhibit A.

4. Also that the Carrier on December 1, 1965 arbitrarily assigned Crane Operators F. Watson, E. Fletcher and B. Rupert to oil and

"It is true that mechanical department employes have performed some of this work, but it does not appear that any practice existed under which they performed it exclusively. The record shows the practice to be to the contrary — part has been performed by them and part farmed out for more than thirty years. Under such circumstances the mechanical forces are in no position to claim an exclusive right to perform the work. Awards 1110, 1556. Mechanical forces have the exclusive right only to the work embraced in their scope rule and other work exclusively performed by them under an established practice. The claim is not sustainable under either contingency."

In Award 3956 (Machinists v. GN, Anrod) it was held:

"The uncontroverted evidence proves that the maintenance of way employes performed no repair work on the defective units in question and that the Claimants actually repaired said units. All that the maintenance of way employes did was to loosen some bolts, remove the inoperative units from the machines, transport them to and from the Hillyard shop, and re-install the repaired units by putting them in their proper places and fastening the bolts. The work performed by them merely involved some simple routine tasks occurring in the day-to-day handling of the equipment and requiring no experience, skill or training as a machinist within the contemplation of Rule 48 of the labor agreement. In other words, it was purely incidental to the actual repair work. Consequently, the work here in dispute was not covered by Rule 49 of said agreement and did not, therefore, come under the exclusive jurisdiction of the machinist craft. See: Awards 1000, 1996, 2223, and 3824 of this Division.

For the above stated reasons, it becomes unnecessary to rule on the Carriers' contention that the assignment of the work here complained of to employes other than machinists was sanctioned by past practice and we express no opinion on the validity of said contention."

As the above awards clearly point out the rules upon which the claim is based lend absolutely no support to the organization's contention that the work involved is exclusive to the Machinist's craft. The carrier respectfully submits that this claim is invalid and should be denied on the basis of the above awards, evidence of past practice on the property, and the absence of agreement rules to support the claim.

(Exhibits not reproduced.)

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 issue herein is whether or not the work in question is reserved exclusively to Machinist Helpers under the Agreement governing the parties to this dispute.

The facts are that Carrier's Crane Operators greased electrically powered 10-ton capacity Gantry Cranes numbered 71, 72, 91 and 92 at the merchandise piers in Baltimore, Maryland on December 1, 1965.

The Organization contends that the petitioners regularly perform the work in question; that Rules 49 and 51 were violated as a result of Carrier's action.

Carrier's position is that the work in question is incidental to the duties of a Crane Operator; that the Claimants worked on the claim date and thus did not sustain financial loss; that the work of greasing cranes is not exclusively reserved to Machinist Helpers by agreement rule or practice; that the operators of the Gantry Cranes are under the jurisdiction of Carrier's Transportation Department.

The Scope Rules of the Agreement involved herein state:

"RULE 49.

CLASSIFICATION OF WORK

Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work."

"RULE 51. MACHINIST HELPERS

Helpers' work shall consist of helping machinists and apprentices, operating drill presses (plain drilling) and bolt threaders not using facing, boring or turning head or milling apparatus, wheel presses (on car, engine truck and tender truck wheels), nut tappers and facers, bolt pointing and centering machines, car brass boring machines, twist drill grinders; attending tool room, machinery oiling, locomotive oiling, box packing, applying and removing trailer and engine-truck brasses, assisting in dismantling locomotives and engines for repairs, applying all couplings between engine and tender; locomotive tender and draft-rigging work except when performed by carmen, and all other work generally recognized as helpers' work."

A close examination of said Rule 51 shows that it does specifically cover the particular type of work involved in this dispute, inasmuch as we feel that "greasing cranes" would come under the category of "machinery oiling." Therefore, Carrier violated the Agreement when it permitted other than petitioners herein to perform said work.

In regard to damages the record is clear that Claimants did not lose any time from work and thus suffered no pecuniary loss as a result of Carrier's violation of the Agreement. This Board has on numerous occasions been faced with the perplexing problem of such a situation as here, and many Awards are in conflict in regard to attempting to finally and conclusively decide this vexing question.

We are committed to the principle that damages must be confined to the actual monetary loss suffered by Claimants due to the violation of the Agreement by Carrier, and that this Board is not empowered to use sanctions or penalties not authorized or permitted by the controlling Agreement. See Third Division Awards 13236, 14371, 14693, 14853, 14920, 14937, 15062, 15468, 15624; Brotherhood of Railroad Trainmen v. Denver and Rio Grande Western Railroad Company, 338 F. 2d 407, cert. den. 85 S. Ct. 1330.

Therefore, until the United States Supreme Court decides otherwise we must deny in regard to damages the claims inasmuch as Claimants did not suffer any pecuniary loss as a result of Carrier's violation of the Agreement.

AWARD

Paragraph 1 of the claim is sustained.

Paragraph 2 of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1968.

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