Award No. 5577
Docket No. 5391
2-MP-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the rule 25, 107 (a), 108 of the controlling agreement, October 21, 1965 when they issued orders that any Craft could operate the 15 or 20 ton electric cranes at Houston, Texas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the following Electricians sixteen (16) hours each at the punitive rates as follows:

M. L. Kennedy –16 hours from Oct. 21, 1965 to Nov. 3, 1965
A. S. Fitzgerald–16 hours from Oct. 21, 1965 to Nov. 3, 1965
O. J. Strong –16 hours from Oct. 21, 1965 to Nov. 3, 1965
W. B. Nichols –16 hours from Oct. 21, 1965 to Nov. 3, 1965
J. T. Rector –16 hours from Oct. 21, 1965 to Nov. 3, 1965
H. M. Gross –16 hours from Oct. 21, 1965 to Nov. 3, 1965

and to be continuous until violation is adjusted; the Claimants were available and should have been called.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a regular force of electricians at Houston, Texas; the electrical workers seniority division includes the subdivision of crane operators, Mr. M. L. Kennedy, A. S. Fitzgerald, O. J. Strong, W. B. Nichols, J. T. Rector and H. M. Gross, hereinafter referred to as the Claimants, are employed by the Carrier at Houston, Texas and holds contract to perform said work.

In 1957, a 15 and 20 ton electric overhead cranes were installed in the Settegast Diesel Shop in Houston, Texas, and the electrical craft employes

25, has not been violated. Rules 107 (a) and 108 do not contract the work of operating cranes exclusively to employes of the electrical craft. When and if crane operators are employed, the Carrier recognizes that the electrical craft is entitled to represent such employes. The scope and jurisdiction of the work to be performed by crane operators is not defined.

As pointed out above, all of the claimants are regularly assigned electricians in the diesel facility at Houston. None of them have suffered any loss of pay. None of them would have received additional pay if an electrician on duty had been used to operate the cranes as argued by the Employes. For this reason, there is no basis for the monetary claim in any event. The Shop Craft Agreement on this property does not provide for the assessing of penalties. The rules relied on by the Employes do not provide for the payment of a penalty. Your Board has no authority to assess a penalty. Under these circumstances, your Board has held many times that the monetary claim must be denied. For example, your Board denied the monetary claim in Award 4121 — a claim on this property involving the same agreement. There your Board stated:

> "However, claimant Trainor was fully employed on regular assignment at his home point at the same pay, and suffered no pecuniary loss."

The monetary claim was denied. See also Awards 3672 and 3967 holding your Board has no authority to assess a penalty where no arbitrary or penalty is provided in the agreement.

Since claimants were fully employed on regular assignments and suffered no pecuniary loss, the monetary claim must be denied in any event.

The claim in this dispute is entirely lacking in merit, and is not supported by the agreement, including the rules cited by the Employes, and should be denied.

(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.

This continuing claim arose at Carrier's Diesel Facility at Houston, Texas, which is equipped with a thirty (30) ton overhead traveling crane as well as two smaller overhead cranes (20 and 15 tons). Petitioner contends that employes in the Electrical craft had customarily operated all three cranes at Houston since 1957 until October 21, 1965 when Carrier commenced assigning other than Electrical Workers to operate the two smaller cranes that are equipped with pendant controls operated from the floor. Petitioner urges that Rules 25(c) and 108 of the applicable Agreement require Carrier to assign

the disputed work exclusively to members of the Electricians' craft, even though no employes classified as crane operators are employed at Houston, and that named Claimants from the overtime board should be compensated at the punitive rate for all time lost since October 21, 1965.

Carrier avers that since 1952 other than electricians have operated cranes equipped with pendant controls in connection with their particular work at Houston, as opposed to the large thirty (30) ton overhead traveling crane, which is regularly operated by an Electrician's Helper or an Electrician when the Helper is not on duty.

It is undisputed that no employes classified as crane operators are employed at Carrier's Diesel Facility at Houston, unlike other installations of Carrier, and Petitioner does not contend that Rule 25(c) obligates Carrier to employ men in such classification. However, Petitioner urges that Rule 25(c) and Rule 108 clearly imply that cranes must be operated by employes within the Electrical craft to the exclusion of all other employes, even though no employes classified as crane operators under said rules are employed at this location.

Rule 107 of the applicable Agreement is entitled "Electrical Worker's Classification of Work". This rule, which generally describes the scope of Electricians' work, contains no reference to the operation of overhead cranes among the diversified duties enumerated therein. In view of the foregoing, Petitioner has the burden of establishing through competent evidence that the disputed work at Houston has been historically and customarily performed by employes within the Electricians' craft to the exclusion of all others. The Carrier denies this contention, and has offered affirmative evidence to establish that machinists working in the truck shop and laborers using cleaning vats have operated the floor controlled cranes in connection with their regular work, and that no particular craft has been assigned to operate said cranes to the exclusion of all others.

Petitioner has offered competent evidence to support its averment that since 1957 the fifteen (15) and twenty (20) ton electric overhead cranes have been operated exclusively by employes in the electrical craft.

Thus, we are confronted with conflicting evidence concerning the validity of a basic premise advanced by Petitioner in support of the instant claim. After thorough examination of the entire record in this case, we cannot resolve this conflict. Consequently, we must find that Petitioner has failed to satisfy its burden of proof by a preponderance of substantial evidence. Therefore, the claim will be dismissed.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

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