



Award No. 5741
Docket No. 5611
2-SP(T&L)BK '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES
DEPARTMENT, AFL-CIO (BLACKSMITHS)

SOUTHERN PACIFIC COMPANY (T&L)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly used Blacksmith Lewis McPherson as a helper on August 17, 1966.
2. That accordingly, the Carrier be ordered to compensate Blacksmith helper Wilbur Cole, Sr., eight (8) hours at time and one-half account of this violation.

EMPLOYEES' STATEMENT OF FACTS: The Southern Pacific Company (Texas & Louisiana Lines), hereinafter referred to as Carrier, maintains a Diesel Shop at Houston, Texas. One Blacksmith, Lewis McPherson, was assigned to the second shift, 4 P.M. to 12 Midnight on August 17, 1966. The handholds on Diesel Locomotive #2911 had to be repaired and straightened on the 4 P.M. to 12 Midnight shift. Since this was a two man operation, Blacksmith C. R. Perry, who worked the first shift (7:30 A.M.-4 P.M.) was worked overtime until 12 Midnight to repair and straighten the handholds. Blacksmith McPherson was taken from his regular assignment to help Mr. Perry perform this work. The work Mr. McPherson did was to operate the steamhammer and assist Blacksmith Perry which is work generally recognized as Blacksmith Helper work, as evidenced by copy of letter attached hereto as Exhibit A.

Blacksmith Helper Wilbur Cole Sr., hereinafter referred to as the Claimant is regularly employed by the Carrier as a Blacksmith Helper in its Diesel Shop at Houston, Texas, and is regularly assigned to the first shift, 7:30 A.M. to 4:00 P.M., to operate steamhammer and help Blacksmiths. Claimant worked his regular assignment on August 17, 1966, as did Blacksmith Perry, and was available for overtime work on said date.

This dispute has been handled with all officers of the Carrier designated to handle such disputes including Carrier's highest designated officers all of whom have declined to make satisfactory adjustment.

The Agreement in effect March 16, 1929, as subsequently amended in controlling.

no such rule covering mechanics. The Carrier submits that had there been any intent to prohibit two mechanics working together, when the agreement was written, such a rule would have been included therein, as in the case of apprentices. It is evident that the Employees are attempting to have the Adjustment Board, under the guise of an interpretation, write a new rule into the agreement, which the Board has no authority to do.

In the correspondence attached as **CARRIER'S EXHIBIT NO. 2** there is a letter dated November 1, 1967, from General Chairman J. B. Carpenter, transmitting letter dated September 22, 1967, from Blacksmith McPherson, in which McPherson asserts that he performed helper's work on the date in question. The Carrier will comment briefly on these letters. General Chairman Carpenter in his letter makes it clear that the Organization contacted McPherson for a statement at a time subsequent to the conference with the Carrier's representative on August 17, 1967, and the letter from McPherson is dated September 22, 1967. It is evident from these facts that McPherson's recollections of the duties he performed on August 16, 1966, were set down more than a year subsequent to the date of the alleged occurrence. The Carrier submits that the lapse of over a year when recollecting the duties performed on a single day—and it should be remembered that similar duties of the craft were repeatedly performed by McPherson daily during the ensuing year—may reasonably be expected to reduce the accuracy of the statement as well as the credibility which may be attached to it. The credibility of this statement is further shadowed by the fact, as Carrier has demonstrated in Exhibit No. 1, that McPherson did not know that his statement concerned a date on which he performed no such overtime work. How could his memory be so exact as to the character of work he performed when he did not recollect that the date shown was in error? His statement must be labelled self-serving to say the least. Blacksmith C. R. Perry resigned from the Carrier's service on March 31, 1967, and McPherson was the only employee to whom the Organization could appeal for a statement at this late date. Since the claimant Wilbur Cole was not on duty at the second shift on the date of the claim, and Perry has resigned, the allegations of McPherson are uncorroborated by supportive testimony and must have the strength to stand alone, or fall. It is pertinent to this consideration that McPherson's seniority as a blacksmith is January 16, 1948, and Perry's was July 30, 1965. The Employees would have the Board believe that McPherson, with eighteen years' experience as a blacksmith mechanic, acted as helper to Perry, who had one year's experience. Even if the allegations contained in McPherson's letter of September 22, 1967, were factual, which the Carrier denies, the Board has ruled many times, as the Carrier has said above in this submission, that a journeyman is the master of his craft and may legitimately be assigned to perform all the work thereof, and that the rules describing work of mechanics and helper are not mutually exclusive but the helpers' rule is subsidiary to the mechanics' rule.

The Carrier respectfully requests a denial award in all respects.

(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.

Carrier maintains a Diesel Shop at Houston, Texas. Blacksmith McPherson was assigned to the second shift, 4:00 P.M. to Midnight. Blacksmith Perry was assigned to the first shift, 7:30 A.M. to 4:00 P.M. On the date of the occurrence here complained of the handholds of Diesel Locomotive #2911 had to be repaired on the second shift. The work was assigned to and performed, jointly, by McPherson and Perry during the hours of the second shift—Perry having been held over after working his regular first shift assignment. During the course of the work Petitioner avers that McPherson performed work exclusively reserved to Helpers, particularly the operation of a steamhammer, in violation of Rule 89 of the Shop Crafts Agreement. Carrier, citing Rule 87, answers that a Journeyman Blacksmith is qualified to and may, without Agreement violation, perform any and all work of the Blacksmith craft.

Pertinent provisions of the Agreement, with emphasis supplied are:

“BLACKSMITHS’ SPECIAL RULES—RULE 86

Qualifications

“Any man who has served an apprenticeship or has had four (4) years varied experience at the blacksmiths’ trade, shall be considered a blacksmith. He must be able to take a piece of work pertaining to his class and, with or without drawings, bring it to a successful completion within a reasonable length of time.”

“RULE 87

“Classification of Work

“Blacksmiths’ work shall consist of welding, forging, heating, shaping and bending of metal; tool dressing and tempering, spring making, tempering and repairing, potashing, case and bichloride hardening; flue welding under the blacksmith foreman; operating furnaces for hammersmiths working material six (6) inches in diameter it equivalent or over; operating bulldozers, forging machines, drop forging machines, bolt machines and Bradley hammers; all welding or building up of frogs, switch points, crossovers, puzzle switches and low rail joints (at Motive Power and Equipment Department Shops); hammersmiths, drop-hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and framing in connection with blacksmiths’ work; oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths’ work; shipyard blacksmiths’ work and all other work generally recognized as blacksmiths’ work.

“RULE 89

Helpers' Work

“Helpers' work shall consist of helping blacksmiths and their apprentices; operating steam hammers, punches and shears (cutting only bar stock and scrap), drill presses and bolt cutters; straightening old bolts and rods (cold); building fires; lighting and operating furnaces, heating, and all other work generally recognized as blacksmith helpers' work.”

These rules, we hold, must be read together. See Award Nos. 4473 and 4736.

All work encompassed in Blacksmiths Special Rules of the Shop Craft Agreement is work reserved to the Blacksmith craft.

Rule 87 in part specifically prescribes work reserved exclusively to Journeyman Blacksmiths and then concludes with a general grant: “all other work generally recognized as blacksmiths' work.”

Rule 89 specifically prescribes blacksmiths' work which may be performed by Helpers and then concludes with: “all other work generally recognized as blacksmith helpers work.”

Rule 87 is a general grant that all blacksmith work is reserved to Journeyman Blacksmiths; and Rule 89 is a permissive exception—Helpers may perform blacksmith work to the extent prescribed in Rule 89.

Rule 89 is not an exclusive right, in Helpers, to the work specified therein. Otherwise stated, it does not preclude Journeymen Blacksmiths from performing the work. It is, instead, an expression of limitation of blacksmith work which may be assigned to and performed by Helpers without violating primary vested rights of the Journeymen. Therefore, it is demonstrated that a Journeyman Blacksmith may perform all recognized blacksmith work without contractual detriment to Helpers.

The foregoing interpretations and application of the Agreement find support in the logic of our Findings in Award Nos. 4473 and 4736 which we reaffirm. We will, therefore, deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

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