Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6923
Docket No. 6687-T
2-MP-MA-'75

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 53 and Letter of Understanding of May 1, 1940, when they arbitrarily transferred the operation of cold cut off saw located at North Little Rock, Arkansas, from the Machinists' Craft to the Blacksmiths' Craft.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the Machinist Helpers listed below in the amount of eight (8) hours at the punitive rate, beginning October 11, 1972, and this being a continuous claim, therefore, a record shall be kept by the Carrier or this violation as long as this work is being performed by the Blacksmiths.

October	11,	1972	8 hours	R. R. Carr
"	12,	"	8 "	H. A. Lairmore
"	13,	"	8 "	F. L. Quinn
"	16,	"	8 "	A. C. Hickerson
"	17,	"	8 "	J. C. Bell
"	18,	"	8 "	W. J. Marshall
"	19,	"	8 "	P. Chapman
"	20,	"	8 "	A. H. Wiley
"	23,	"	8 "	H. C. Beavers
"	24,	"	8 "	A. H. Lary
"	25,	"	8 "	T. White
"	26,	"	8 "	W. Hill
"	27,	"	8 "	H. L. Coulter
"	30,	"	8 "	Lervern Scott
"	31,	"	8 "	A. T. Knight
November	1,	"	8 "	C. Montgomery
"	2,	"	8 "	D. D. Eaton
"	3,	"	8 "	P. E. Golleher
"	6,	"	8 "	E. L. Smith
"	7,	"	8 "	L. Johnson
"	8,	"	8 "	D. A. Templeton
"	9,	"	8 "	R. L. Sabb
"	10,	"	8 "	L. W. Shamhart
"	13,	"	8 "	A. Harper

November	14,	1972	8	hours	J. D. Maxwell
"	15,	"	8	"	R. L. Dowler
"	16,	"	8	"	E. L. Vanlandingham
"	17,	"	8	"	R. R. Carr
"	20,	"	8	"	H. A. Lairmore
"	21,	"	8	"	F. L. Quinn
"	22,	"	8	"	A. C. Hickerson
"	23,	"	8	"	J. C. Bell
"	24,	"	8	"	W. J. Marshall
"	27,	"	8	"	P. Chapman
"	28,	"	8	"	A. H. Wiley
"	29,	"	8	"	H. C. Beavers
"	30,	"	8	"	A. H. Lary
December	1,	"	8	"	T. White
"	4,	"	8	"	W. Hill
"	5,	"	8	"	H. L. Coulter
"	6,	"	8	"	Lervern Scott
"	7,	"	8	"	A. T. Knight
"	8,	"	8	"	C. Montgomery
"	11,	"	8	"	D. D. Eaton

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.

Prior to April 1, 1971, Texas and Pacific maintained a coupler reclamation shop at Marshall, Texas that served Carrier's entire system pursuant to a coordination agreement negotiated under Section 4 of the Washington Job Protection Agreement.

On April 1, 1971 the main building in the T & P shop complex at Marshall (which included the coupler reclamation shop) was destroyed by fire. As a consequence Carrier arranged to relocate the coupler reclamation shop at Little Rock, Arkansas. The relocation was also made

pursuant to a selection of forces coordination under the Washington Job Agreement. The Organization was a party signatory to that Agreement (dated November 12, 1971). Specific reference was made in the Agreement that the work, including freight coupler work by blacksmiths, would be transferred from the T & P at Marshall to the MP at Little Rock.

At issue in this dispute is the use by blacksmiths at Little Rock of a newly purchased "Wells cold cut-off saw" to cut off coupler shanks of freight car couplers. Carrier and the Boilermakers & Blacksmiths (appearing pursuant to the third party notice) contend that the new Wells saw is an automatic saw that requires no operator - merely the push of a button. The Machinists dispute this, asserting that the saw requires a ten step operation and that a Machinist Helper must be assigned to man the saw under the provisions ofRule 53 that provides in pertinent part:

> "Helpers' work shall consist of helping machinists and apprentices, <u>operating power driven hacksaws and cold cut saws,</u> ... <u>and all other work generally recognized as helpers' work."</u> (Underscoring added)

The Machinists argue further that no such language appears neither in the Blacksmiths' Classification of Work Rule nor the Blacksmith Helper Rule, and therefore the Machinist Helpers have the exclusive right to the work performed.*/ The Board is of the opinion that the claim herein is without merit. There has been no showing that Machinists have ever been assigned the work of sawing a coupler shank or to operate the Wells saw for this purpose. The record does show that the work of coupler reclamation has always been that of blacksmiths. The use of the saw, in this context, is an integral part of coupler reclamation.

Construed properly, Rule 53 means that Machinist Helpers have the right to operate power driven saws in connection with the work defined in the Machinists' Classification of Work Rule. They do not, as the Board interprets the agreement, have the exclusive right to operate any and all power driven hack saws or cold cut-off saws on Carrier's property unrelated to Machinists' work. This conclusion is supported by Second Division Award No. 6696 that found:

> "Nothing in Rule 1 Section 2(e) or Rules 117 (Classification of Work), and Rule 119 (Wrecking Crews) of the Controlling Agreement prohibit Carrier from assigning any and all necessary equipment and tools to be used by mechanics of the appropriate categories to perform their properly assigned tasks. It is well established that no employe 'owns' a piece of equipment

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*/ It is noted that the operation of power driven hack saws and cold cut off saws does not appear in the Machinists' Classification of Work Rule.

"belonging to Carrier and has exclusive rights to use same. This was well stated in Third Division Award 19815 (Roadley) in which it was held that, 'Nothing in the Agreement supports the contention the Claimant, as a Laborer-Driver, had exclusive rights to drive any particular truck or that Carrier is restricted in the use of a Carrier-owned vehicle to its operation by any one employee alone to the exclusion of all others.'"

Finally, the Board has reviewed the findings in Award No. 6762 and does not find them applicable to the circumstances and issues herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1975.

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G. M. YOUHN

LABOR MEMBER'S DISSENT AND CONCURRING OPINION

TO AWARD NO. 6923, DOCKET NO. 6687-T

The Referee in Award No. 6923, Docket No. 6687-T, along with the majority in this instant award, has completely departed from reason and precedent in this absurd interpretation of the Helpers Rule 53.

The majority quoted this Rule 53 in pertinent part:

> "Helpers' work shall consist of helping machinist and apprentices, operating power driven hacksaws and cold cut saws, ... and all other work generally recognized as helpers' work." (Underscoring added)

and then completely departed from reason and sanity in interpretating what this rule means under the label of "Construed properly

The Award dictum on this issue states in pertinent part:

> "Construed properly, rule 53 means that Machinist Helpers have the right to operate power driven saws in connection with the work defined in the Machinists' Classification of Work Rule. They do not, as the Board interprets the agreement, have the exclusive right to operate any and all power driven hack saws or cold cut-off saws on Carrier's property unrelated to Machinists' work.

The neutral had been made aware of Awards dealing with the established fact that the mechanic, as master of his craft, was properly entitled to all work in his crafts as well as class. The very name of this craft "Machinists" denotes operation of machines and for this neutral to state that the operation of machines is only their exclusive right on machinists' related work is departing completely from contractual right, precedent and reason. The majorit

was fully aware that the machinist craft operates machines that perform work and finished products for every class, craft and department on this Carrier and all carriers.

Part of the dictum that doesn't square with the facts is wherein it is stated that there had been no showing that Machinists had ever been assigned to operate the Wells saw. Of course there had not been any such showing since the purchase of this new saw is what triggered this dispute. How in the world can past practice be determined on a new machine and which fact of "newness" is spelled out even in the Carriers Submission in pertinent part:

"Carrier's Statement of Facts:

> XXX 6. The new Well saw is the only saw of that make and manufacture on the property. It was purchased new for the coupler reclamation shop xxxx."

In any event the neutral was fully informed and aware that past practice was of no consideration in the face of clear unambiguous language of the very rule he quoted and underscored as hereinbefore cited.

Even the majority concedes that no other class or craft has language in its rules to govern the operation of such machines. Then by what tortured reasoning can such absurd interpretations be placed on this rule where this operational right is spelled out in clear, unambiguous language.

In an attempt to support this unreasonable interpretation the dictum states :

"This conclusion is supported by Second Division Award No. 6696 that found:

Nothing in Rule 1 Section 2 (e) or Rules 117 (Classification Agreement prohibit Carrier from assigning any and all necessary categories to perform their properly assigned tasks. It is well established that no employe 'owns' a piece of equipment 'belonging to Carrier and has exclusive rights to use same. This was well stated in Third Division Award 19815 (Roadley) in which it was held that, 'Nothing in the Agreement supports the contention the Claimant, as a Laborer-Driver, had exclusive rights to drive any particular truck or that Carrier is restricted in the use of a Carrier-owned vehicle to its operation by any one employee alone to the exclusion of all others.' "

In this quoted Second Division Award No. 6696 it states emphatically that nothing in the Rules of that controlling Agreement covered the assignment of equipment and tools for that particular task. In this instant case Rule 53 categorically assigns it and so again there is twisted and illogical reasoning.

The same facts pertain to the Third Division Award 19815 quoted therein. This Award also states that nothing in the Agreement covered the assignment of the equipment in question. Again this distinguishes the Award as not having precedence to the instant case wherein the Agreement spells out the assignment of the machine in question.

The majority is consistent with their inconsistency and twisted logic to the last sentence wherein is stated:

"Finally, the Board has reviewed the findings in Award No. 6762 and does not find them applicable to the circumstances and issues herein."

Contrary to this self serving statement a review of the circumstances and issues in that case would reveal:

(1) The same parties including Third Party Organization.

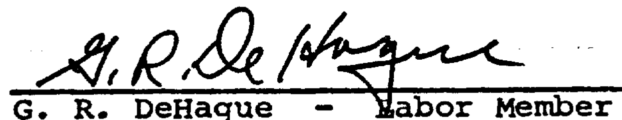
(2) The same controlling Agreement and Rules.

(3) The same Carrier points and shops involved.

(4) The same transfer of Employes and work Agreement involved.

(5) The same work item of couplers involved.
etc. etc. etc.

In fact the only difference being that in Award No. 6762 the majority gave a proper interpretation and significance to these same unambiguous rules. This avenue then of course led to a sustaining Award whereas the roadblocks, detours, blind alleys, dead ends, etc. in the twisted logic in this case has led to an Award that is palpably erroneous and to which I vigorously dissent.



G. R. DeHague - Labor Member