Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7020
SECOND DIVISION Docket No. 6859-T
2-SLSW-MA-'76

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

The Carrier damaged the machinist craft particularly Machinist Helper Bennie Wade on July 30, 1973 when a carman was assigned to operate a 50 ton bridge crane at Carrier's Pine Bluff Shops, and should be ordered to make whole the craft by payment of eight (8) hours at straight time rate to Claimant Wade.

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 Carrier completed a new facility, Gravity Yard, in 1957. Thereafter all locomotive servicing, maintenance and repair work was moved from the old Pine Bluff Yard to a new Locomotive Maintenance Plant at the Gravity Yard. The freight car heavy repair facilities remained in the old mechanical area of the Pine Bluff Yard and in one of the buildings, called by some the "old locomotive building" there is a 15-ton overhead bridge crane. This building is presently used in part by heavy car repair forces (in the Third Party Submission of the Carmen, they point out that the Car Department expanded into the building in 1973, when a freight car truck shop was established in the building to rebuild the trucks of freight cars undergoing heavy program repairs); and in part by forces engaged in diesel locomotive wheel work.

On July 31, 1973, the Machinists' Local Chairman filed a claim in favor of Machinist Helper B. Wade on the basis that Carmen were allowed to operate a 15-ton crane in the above-mentioned building.

In a letter from the Machinists' General Chairman to the Carmen's General Chairmen, (Carmen's Rebuttal Exhibit No. 1), the Machinists' General Chairman explained the problem as follows:

> "Very recently Carrier has commenced removing the crane operator from the bridge cranes in the old locomotive back shop, and replacing them with carmen when the lifting involved pertains to service on freight or passenger cars. Rule 45 of the current agreement clearly assigns the operation of these cranes to machinist helpers, and for thirty-five years to my knowledge machinists helpers have operated them exclusively, making lifts for all crafts. I can say positively that in that time no question has been raised by either Carrier or the crafts concerning the propriety of jurisdiction or practice in effect. Thus contractual assignment and past practice establishes a very firm claim for my craft."

The Machinists base their case on two contentions, (1) that the Agreement of the parties, Rule 45, spells out crane operators work as the work of Machinist Helpers, and (2) that based on practice, the Machinists' Craft has had undisputed jurisdiction of the work for most of a half century (Employes' Submission, page 3).

The Carmen's Organization was given due notice of the proceedings before this Board and filed a Third Party Submission. It is the Carmen's position that the work in question belongs exclusively to Carmen under the provisions of Rule 87 of the controlling agreement.

The Carrier contends that the work in question is properly Carmen's work.

Rule 45 states:

> "Rule 45 - Machinist Helpers
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> Helper work shall consist of helping machinist and apprentices, operate drill presses and bolt threaders not equipped with a facing, boring or turning head or milling apparatus, bolt pointing and centering machines, car wheel presses, bolt threaders, nut tappers and facers; crane men, toolroom attendants, machinery oilers, box packers, grease cup fillers and oilers, and applying all couplings between engine and tenders; locomotive tender and draft rigging work except when performed by carmen, and all other work generally recognized as machinist helper's work on this Carrier."

We find that the use of the term "crane men" in Rule 45, a rule spelling out that Machinist Helper work "shall consist of helping machinists and apprentices..." does not in the language of the rule itself give an exclusive reservation of all crane work in Carrier's shops to Machinists.

Certainly Rule 45 gives Machinist Helpers the exclusive right to operate all cranes involving the Machinists' Craft. But we find that the terms "crane men" as used in Rule 45 cannot serve as Agreement support for Machinists to operate a crane in conjunction with work performed by Carmen on Freight cars.

The Machinists contend that there was a practice for almost a half century to assign Machinist Helpers to operate all bridge cranes used in the shops whose general purpose was to make lifts in connection with the repair of railroad equipment or machinery regardless of what craft the lifts were for. (Employes' Submission pg. 2 & 3). It is settled beyond question in a great number of awards of this Board that in order to establish exclusive rights to particular work by past practice, the petitioner has the burden of proving that the work involved has been performed by the petitioning organization historically and customarily, system-wide. The Machinists therefore have the burden of proving to this Board the system-wide practice that before July 30, 1973 Machinist Helpers operated all bridge cranes used in all the Carrier's locomotive and car shops in connection with repair of railroad equipment regardless of craft involved. The Machinists' proof is Employes' Exhibit C, Employes' Exhibit G and Employes' Exhibits R-1, R-2 and R-3. All of the exhibits go to show that Machinists have exclusively operated the particular overhead bridge crane in the "old locomotive shop" at Pine Bluff. For example, Employes' Exhibit C states: "... I would like to advised that a machinist helper has been assigned to this crane and made all pick up for machinist, electrician, boiler-makers, pipe fitters and carman for the past forty four years to my knowledge, therefore I am declining your decision and appealing this case. (Emphasis added)." The Machinists "assert" that Machinists operate "all" heavy capacity bridge cranes in the Carrier's locomotive and car shops (Employes Submission p. 3, Employes Rebuttal p. 5), but the Machinists' "proof" relates only to the 15-ton crane in the old locomotive shop. Clearly the Machinists have not met their burden of proof in the matter of practice, and we must deny the claim.

The Organization contends that there was no denial of the Machinists' facts on the property by the Carrier, and that statements made and unrefuted become fact. The facts submitted by the Machinists on the property relate only to the operation of the 15-ton crane in the old locomotive shop. These facts are not sufficient to satisfy the Machinists burden of proof of a system-wide practice.

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 26th day of March, 1976.

LABOR MEMBERS' DISSENT TO AWARD NO. 7020,

DOCKET NO. 6859-T

The Referee in Award No. 7020, Docket No. 6859-T, along with the majority in this instant Award, has completely departed from reason and precedent in this absurd interpretation of the Helpers Rule 45.

The majority quoted this Rule 45 in pertinent part:

> "Helper work shall consist of helping Machinist and apprentices, operate xxx crane men xxx and all other work generally recognized as Machinist helper's work on this Carrier."

and then completely departed from reason in interpreting what this rule means in the Award dictum on this issue stating in pertinent part.

> "We find that the use of the term "crane men" in Rule 45, a rule spelling out that Machinist Helper work "shall consist of helping machinists and apprentices..." does not in the language of the rule itself give an exclusive reservation of all crane work in Carrier's shops to machinists. Certainly Rule 45 gives Machinist Helpers the exclusive right to operate all cranes involving the Machinists' Craft. But we find that the terms "crane men" as used in Rule 45 cannot serve as Agreement support for Machinists to operate a crane in conjunction with work performed by Carmen on Freight cars."

The majority was well aware that no other mechanic or helper rule on this property, including the Third Party (Carmen) rules, contained any language whatever on the assignment of crane work or operation. So this tortured reasoning that the language, assigning it to Machinist helpers, only applies to machinist craft work, is completely devoid of any common sense or logic.

The majority is well aware of the countless holdings that no Board has the power to rewrite agreements which is exactly what has been attempted in this instant case. A refresher course on this principle is within Third Division Award No. 20383 by Referee Dorsey stating:

> "This Board has no equity powers (jurisdiction) vested by the Railway Labor Act (RLA). In the instant dispute the Board's jurisdiction is confined to the interpretation or application of agreements (between the parties herein) concerning rates of pay, rules, or working conditions. RLA, Section 3, First (i). It matters not what stranger agreements provide for; nor, does industry practice when the wording of the confronting agreement is not ambiguous; nor, what may be our sense of equity.
>
> It is hornbook that this Board may not enlarge upon or diminish the terms of a collective bargaining agreement. If either party finds the terms of such an agreement not to its liking it must seek a remedy through collective bargaining. RLA Section 6."

The Award language is then directed to what had been the practice on the property. In the face of this unambiguous rule any practice would not have to be proven and which fact the majority was certainly aware of. Even if this issue was considered then the record unrefutably showed a practice of Machinists Helpers operating bridge cranes for almost a half century which even the majority acknowledged. The majority then tried to negate this past practice record by wrongfully attributing all of the unrefuted statements, exhibits, etc., to the one crane involved in the claim. Certainly the claim was for the operation of this

one crane since it was the only bridge crane on the Carrier's property that had been wrongfully assigned part time to another craft. The record showed that all other cranes were still operated by Machinist Craft members even though performing lifting functions for all crafts.

Another inexplicable fact is that even the crane involved in this instant dispute was still operated by Machinist Craft members for all craft lifting needs except the Carmen. For the majority to dictate that "system-wide" practice was needed to be proven is certainly ridiculous since he had been made aware that on this comparatively smaller carrier this was the only shop point where major work was performed that necessitated such bridge cranes

The petitioner can only conclude that for inexplicable reasons the majority was grasping vainly for an excuse to deny this case irrespective of common sense, practice, and agreement language. The evidence of record irrefutably portrays that the findings and conclusions of the majority are palpably erroneous and to which I vigorously dissent.

G. R. DeHague - Labor Member