

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(Chicago & Eastern Illinois Railroad Company

Dispute: Claim of Employes:

1. That the Chicago & Eastern Illinois Railroad Company violated the Controlling Agreement of July 15, 1944, particularly Rules 22, 40 and 41 when they arbitrarily transferred the work of maintaining three (3) mobile gasoline cars (car inspection carts), hereinafter referred to as Dune Buggies, located at the Diesel Shop, Yard Center, Dolton, Illinois from the Machinist Craft to the Carmen Craft.
2. That accordingly, the Chicago & Eastern Illinois Railroad Company be ordered to compensate Machinist T. L. Mayer in the amount of eight (8) hours at the punitive rate of pay for May 15, 1973 and continuing until Carmen stop performing Machinists' work. The Carrier will keep an accurate account of the hours Carmen are performing Machinists' work.

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.

On January 14, 1973, Carrier received three "Dune Buggies", which are

propelled by a gasoline engine, and transport people and equipment. Upon delivery, machinists were instructed to "check the Buggies out" and prepare them for operation; performing the following services:

- "1. Checked the engine crankcase for the proper oil level and added any necessary 20/20 weight oil.
2. Checked the reservoir for hydraulic oil and added oil if necessary.
3. Checked for the proper grease fittings and added grease if necessary.
4. Placed numbered metal tags on these Dune Buggies and made a report of these numbered Dune Buggies to the Chief Clerk in the Master Mechanic's office.
5. Prepared the Dune Buggies for service and were given instructions on how the Dune Buggies were run by the operating instructor.
6. The metal tags placed on these Dune Buggies had the following numbers, 1612 J, 1613 J and 1614 J."

The Organization asserts that on May 15, 1973, Carmen were observed doing similar work on the "Dune Buggies", and submitted a claim.

The employees contend that Rule 22, 40 and 41 give them the exclusive right to perform regular maintenance duties on the Dune Buggies.

"RULE 40.
Qualifications.

"Any man who has served an apprenticeship or has had four (4) years' experience at the machinists' trade and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive whatsoever, shall constitute a machinist.

RULE 41.
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. On running repairs machinists may connect or disconnect any wiring, coupling or pipe connections necessary to make or repair machinery or equipment.

This rule shall not be construed to prevent engineers, firemen and cranemen of steam shovels, ditchers, clam shells, wrecking outfits, pile drivers and other similar equipment requiring repairs on line of road from making any repairs to such equipment as they are qualified to perform."

Citing Carmen Rule 98 to substantiate their claim, the Organization states that said rule makes no reference to any type of work on engines,

Carmen Rule 98 states:

"RULE 98.
Classification of Work.

Carmen's work shall consist of building, maintaining,

dismantling, painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing lever cars, hand cars and station trucks, building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint on passenger cars (not including use of sand blast machine or removing in vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliances and train car repairers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

The Carrier denies that regular maintenance of "Dune Buggies" is exclusively the machinist's duty, and notes that the Agreement cited by the Organization was written thirty years before "Dune Buggies" were operated. Moreover, it maintains that the only applicable portion of Rule 41 is the general provision. See, for example, Third Division Award 14284 and Second Division Award 5031, indicating that under the general provision of a rule, the employees must show the work was theirs exclusively.

It is well documented, and long recognized, that this Board determines factual disputes based upon the manner in which the dispute was handled on the property. Initially, Carrier advised that the bases for the claim was not specific. In reply, the employees submitted, to the Director of Labor

Relations, specific information showing that on May 15, 1973 Carmen "...removed wheel from front-end, adjusted shocks, removed spark plugs, added oil and greased..." Carrier did not rebut that assertion.

In its submission of the matter to this Board, Carrier has raised a number of defenses, suggesting that Rule 41 does not extend to this type of off-track equipment; lack of exclusivity, etc.

Not only does Rule 41 state that machinists are responsible for "lubricator and injector work", it spells out a broad spectrum of maintenance duties. We feel that the employees made a sufficient showing, on the property, to establish a prima facie case of a violation of the specific terms of Rule 41. Under those circumstances, the fact that "Dune Buggies" were new pieces of equipment is not dispositive.

Certainly, Carrier may rebut the prima facie showing, and, as noted, it raised certain concepts before us in an attempt to do so. But, Carrier's "on-property" handling was basically conclusionary in nature and not directly pertinent so as to provide us with a basis to find a successful rebuttal.

Of course, this Board may not engage in speculation. Accordingly, we will sustain the claim only to the extent of work performed on May 15, 1973.

We stress, of course, that this Award is limited to this record before us, and the failure to rebut, on the property. It does not contemplate other disputes not properly before us.

AWARD

Claim sustained to the extent stated in the Finding, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch / ac
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of September, 1976.