

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
(Texas Pacific-Missouri Pacific Terminal
(Railroad of New Orleans

Dispute: Claim of Employees:

1. That the Carrier having assigned other than the Machinist craft to weld flat spots on number 4 wheels on their assigned unit number 483, New Orleans, Louisiana, Sunday, February 3, 1974 was in violation of the controlling Agreement on the property, as follows:

RULE 41 - CLASSIFICATION OF WORK

- (a) "Machinist 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) engine inspecting; pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery; scale building in shops; shafting and other machinery, ratchet, and other skilled drilling and reaming, tool and die making, tool grinding, and machine grinding, axle turning, axle, wheel and tire turning and boring; 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".
(Emphasis supplied)

RULE 22 - ASSIGNMENT OF WORK

- (a) "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft..." (Emphasis supplied)
2. That in restitution, the Carrier be ordered to reimburse Machinist E. G. Rivero for seven (7) hours at the applicable punitive rate of pay from 3:00 P.M. until 10:00 P.M., Sunday, February 3, 1974, for work entitlement he was justly due and denied by the Carrier under the controlling Agreement that being the consolidated Shop Crafts Agreement effective date of August 1, 1969.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Organization claims that Carrier arbitrarily violated the Agreement when it failed to designate Claimant to weld flat spots on number 4 wheels on the assigned unit number 483, New Orleans, Louisiana, February 3, 1974.

Citing Rule 22 and 41, the Organization asserts that said rules establish clear authority for the Claimant to perform the duties in dispute:

"Rule 41 - CLASSIFICATION OF WORK

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"Rule 22 - ASSIGNMENT OF WORK

(a) 'None but mechanics or apprentices regularly employes as such shall do mechanics' work as per the special rules of each craft...'

(f) In compliance with the special rules included in this agreement none but mechanics and their apprentices in their respective crafts shall operate oxy-acetylene, thermit, or electric welder; where oxy-acetylene or other welding processes are used, each craft shall

"perform the work which was generally recognized as work belonging to that craft prior to introduction of such processes, except the use of cutting torch when engaged in wrecking service. At points where there is not sufficient welding for a member of each craft at the point employed, a welder or welders of any craft may do the welding for all crafts.

(g) When performing the above work for four (4) hours or less in any one day, employees will be paid the welder's rate of pay on the hourly basis, with a minimum of one (1) hour; for more than four (4) hours in any one day, welders' rate of pay will apply for that day."

Although the Organization concedes the Carmen may have, upon occasion, performed these duties, it cites Award 4501 and 19100 in support of its position that repeated violations do not amend rules.

The Carrier, however, maintains that these duties were properly performed by the Carmen. Rule 41, according to the Carrier, does not specifically confer the work in question to Machinists, and thus, the only basis for relief would be under the "general" provisions of the rule. Carrier cites numerous Awards which demonstrate that under those circumstances the Claimants must establish the "exclusive" right of the work. (See Awards 1808, 4031, 4259 and 5928).

Third Division Award 14384 states, in pertinent part:

"The ultimate issue in this case is whether the work involved is '... generally recognized as signal work.' This Board has consistently held that the Employees cannot establish an exclusive right to work that is not expressly reserved to them by the terms of their Agreement without affirmatively proving that the specific work involved has been performed by them during a controlling period in the past. See Awards 13347 (Hutchins), 11799, 11800, 11801, 12073 (Dolnick), 13336 (Dorsey), and 13691 (O'Gallagher)."

We are not able to find that the employees satisfied that burden of proof.

A W A R D

Claim dismissed.

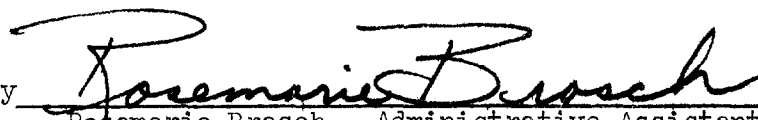
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Award No. 7141
Docket No. 6957-T
2-TP-MPTofNO-MA-'76

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of October, 1976.

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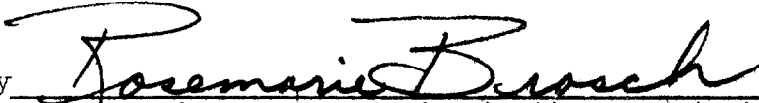
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