

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists
{ and Aerospace Workers
{
{ Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, the Chicago and North Western Transportation Company, hereinafter referred to as the Carrier, erroneously assigned two Carmen, eight (8) hours each, on April 17, 18, 19 and 22, 1974, to perform Machinist work consisting of laying-out, fabricating, assembling, installing and welding a roller conveyor in the Wheel Reclamation Shop at Clinton, Iowa, which is in violation of Rule #62 of the July 1, 1921, Agreement, as amended.
2. That, accordingly, Carrier be ordered to compensate Machinists' Michael Edwards, LeRoy Steines, Gerhardt Rickertsen, David E. Bender, Robert K. Nolan, Duane R. Rechman, Tom Letsch, and Gary R. Klimstra, hereinafter referred to as the Claimants, in the amount of eight (8) hours each, at the rate and one-half Machinists' rate of pay, account Carrier depriving the Claimants their contractual right to perform the disputed work covered by the Machinists' classification of work rules.

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.

This matter involves the fabrication and assembly of steel stands onto which a roller conveyor, manufactured elsewhere, was to be bolted, at the Carrier's Clinton Car Shop. The work was done by employes of the Carmen craft.

The Organization (Machinists) claim that this work was entirely and exclusively within its classification of work rules; that there were Machinists available to do the work; and that the Carrier erred wholly in assigning the work to Carmen.

As third party to the dispute, the Carmen claim that the work is properly within their scope rule, and further:

"... that said claim is improperly before your Board and should be dismissed due to the fact that the Machinists have not followed the required procedures in the handling of disputes and claim as provided for the agreed to letter of understanding, dated February 12, 1940..."

Threshold questions in the dispute are whether or not a jurisdictional dispute exists, and, if so, whether the 1940 letter of understanding must be followed for resolution of the dispute.

Examination of the record shows that no jurisdictional dispute, in the common use of the term, exists in this matter. A jurisdictional dispute normally deals with the introduction of a new operation or procedure or a continuing dispute between two crafts where classification of work rules either do not refer specifically to the work in question or where there is reasonable grounds to show that two or more rules cover the work involved. A single instance of assignment of work to one craft, where it is clearly shown that it belongs to another craft, can hardly be relegated to the jurisdictional dispute procedure. Rather, such specific and provable misassignment may surely yield to the regular dispute procedure and/or resolution by this Board. To hold otherwise would mean that a Carrier could assign any work at any time to any craft without being held responsible for damages of such error. As examples, see Awards Nos. 4547 (Williams), 4725 (Johnson), 5726 (Dorsey) and 6762 (Eischen).

As will be shown below, this Board finds that the fabrication and assembly of stands for a roller conveyor is such a single, isolated instance. Thus, this Board need not examine whether or not the 1940 letter of understanding is applicable. It is noted, however, that Award No. 6958 (Lieberman) finds the 1940 letter of understanding has been inapplicable since 1953.

As to the merits of the issue, this Board finds the resolution within the classification of work rules of the two crafts. Rule No. 62 reads as follows:

"Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals 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 super-heaters, 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." Underscoring added.

Rule No. 124 reads as follows:

"Carmen's work shall consist of pattern-making, flask making, cabinet work, passenger car work, surfacing, priming, varnishing, lettering, decorating passenger cars and locomotives; upholstering, building, repairing, removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; wood fender frames; wood machine operating buffing, millwright work and all other work of the same class generally recognized as carmen's work.

Other carmen's work shall consist of bench carpenter work, passenger car platform work in connection with building and repairing motor lever and hand cars, station trucks and other similar equipment when at shops and all other carpenter work in shops and yards; building and repairing way car steps, repairing stationary car equipment and similar boxes; burning off or sand-blasting paint; spraying or painting underframes, roofs, floors, trucks, iron work, battery boxes and other equipment on passenger cars; locomotive painting, freight and way car painting and stencilling; laying out and cutting stencils; painting and stencilling tool houses, gateman towers and similar building, roadway signs, station trucks, motor cars and other similar equipment when at shops; paint removing with sandpaper or torch and all other work generally recognized as painters' work. Freight and passenger car inspecting, air hose coupling in train yards and terminals; mounting, dismounting and repairing steam, air and water hose; operating punches and shears during shaping and forming, hand forges and heating torches in connection with carmen's work; repairing freight cars and tender trucks; pipe work in connection with air brake equipment on freight cars; applying prepared metal roofing; insulating refrigerator car doors and hatch plus wrecking derrick engineers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work and all other work of the same class generally recognized as carmen's work."

The work involved included fabricating, assembling, installing (including welding) stands for shop machinery. Are the stands themselves "machinery"? This Board finds they are an integral part of the roller conveyor, without which it obviously could not operate. The Carrier itself states in its submission:

"The Carrier must of necessity, however, admit that a study of the machinists' classification of work rules might conceivably result in the conclusion that the fabrication and assembly of stands such as are here involved came under the machinists' classification of work rules."

As to the Carmen's classification of work rules, they are devoid of reference to this type of work, except as to reference to welding. However, such welding is limited to "work generally recognized as carmen's work".

This Board finds the Carrier misassigned the work and thus sustains Claim No. 1.

Under Claim No. 2, the Organization seeks eight hours' pay at rate and a half for eight named employees. When the question was raised by the Carrier as to the ability of the claimants to perform welding work, the Organization provided, on the property, the names of two additional Machinists acknowledged to be qualified in welding.

This Board cannot assume that, if the Carrier had assigned the work to Machinists, the work would have been performed on overtime. The remedy therefore shall be to provide eight hours straight-time pay for eight days. Such pay shall be paid to Machinists as determined on the property between the Carrier and the Organization, taking into account that some of the work was welding (the proportion of welding to the total work performed being in dispute). Thus, some portion of the eight days' pay is to go to Machinists recognized as qualified welders, even if they were not among the original listed claimants.

A W A R D

Claim No. 1 is sustained.

Claim No. 2 is sustained as per Findings.

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 14th day of December, 1976.