

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Carmen)
 (Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the Duluth, Missabe and Iron Range Railway Company violated the Agreement when Machinist was permitted to perform carman Helpers work, September 30, 1975, during overtime hours, 3:30 P.M. to 11:30 P.M.
2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be required to compensate Carman Helper J. E. Aird eight (8) hours at the time and one-half rate.

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 dispute arises out of a claim by the Organization that persons beyond the scope of its Agreement performed work reserved for Carmen-Helpers and work which the Claimant -- a Carmen-Helper -- specifically was entitled to perform.

Claimant was regularly assigned to operate an electric forklift truck 7:00 a.m. to 3:30 p.m., Monday through Friday, Saturday and Sunday being rest days. According to the Organization, Claimant's assigned function was to transport and handle material between the "Stores Department" and the "Car Shop", "car repair production lines", and the handling of scrap metals by use of the fork lift. (Carrier identifies the work areas as "Storehouse", "Car Shop", and "Locomotive Shop"). Included in the material transported in this matter were wheels and axles.

In the Wheel Shop, machinists performed duties within their classification of work, including the pressing of wheels onto and off of axles.

On September 30, 1975 (a Tuesday) Claimant worked his regular tour of duty -- 7:00 a.m. to 3:30 p.m. -- which involved the aforementioned transport of wheels and axles by fork lift. A machinist at the Wheel Shop, on the same shift, was held over and performed duties properly assigned to him for an eight hour overtime tour: pressing wheels on or off axles. In addition to such duties, however, the machinist performed other work that is in dispute, both as to content and appropriateness of assignment: the Organization contends that such disputed work involved the drawing from stock and transporting to the Wheel Shop, by the machinist, wheels and axles; machinist then pressed the wheels on the axles. The Carrier contends the work involved consisted of loading old wheels onto pallets and moving them 50 feet away from the Car Shop, such wheels having been pressed off axles; thus, according to the Carrier, they were moved by the machinist in order to get them out of his way. This, the Carrier contends, was work incidental to the primary function of the machinist and properly performed by the machinist. The Organization, while contending that the work in a dispute involved the movement of wheels from the Stores Department to the Wheel Shop, nonetheless, contends that, even if such work involved the removal of pallets of wheels from the machinist's work area to a holding area, such work was properly covered in the bulletined assignment which the Claimant held. The Carrier contends that operation of a fork lift has never been reserved to the Carmen-Helper, that four other fork lifts are in the shop areas and operated by other crafts, including machinists, and thus, the Organization cannot demonstrate system-wide exclusivity of performing such work. The record shows numerous statements by employees affirming that Carmen-Helpers have been assigned to operate (fork lifts) "for delivery of material such as wheels ... to designated locations ...," and that to their collective knowledge, machinists had never performed such work. The Organization entered other statements by Carmen-Helpers attesting to the extent of their duties as "Fork Lift Operators ... handling material between (the various shops)" during the first shift. Such statements also asserted no knowledge of a machinist being "regularly assigned" to operate fork lifts to handle materials during such shift. The record shows that the Carrier entered statements by two machinists claiming that members of their craft have "... operated a fork lift truck to remove ..." old wheels and axles out of the shop.

The specific function assigned to the machinist on the overtime tour relative to the wheels and axles is important to the case as a whole, i.e. whether he was obtaining and pressing on wheels, or whether he was dis-assembling them, and thereafter removing them from his immediate work area. Notwithstanding the Carrier's argument to the contrary, if it felt the need to bulletin a job of provisioning the various work locations at the Wheel (or Car) Shop, as well as others, with materials drawn out of the stock on the day shift, it can hardly argue that such work changed its nature because it was being performed on the succeeding shift.

The Carrier's contention that system-wide exclusivity would have to be proven is not on point here: the Organization has conceded that the operation of the fork lift per se is not being claimed. What is, is the task of supplying the shops from the Storehouse, and since the Carrier felt the need to bulletin and assign the provisioning job in the first place, it cannot now deny such an action by requiring the Union to prove exclusivity system-wide what it, the Carrier, instituted by bulletin at a single site. It is also obvious that the National "Incidental Work Rule" is inapplicable here: this is not a shop performing running repairs nor is it an "outlying point".

What is key here, however, was the machinist's primary duties that evening. It has been established that operation of a fork lift, per se, is not reserved for Carmen-Helpers. Thus, all crafts may, at one time or another, operate a fork lift in execution of their assigned duties. The Carrier has claimed that the machinist used the fork lift to clear wheels out of his work area following their removal. This is a task which would normally be reasonably required as part of the machinist's duties, particularly where neither the record or a claim exists as to the rights to exclusively operate a fork lift; thus, the machinist could be expected to relocate materials so as to clear his work area, and such duties would be an incidental task to be performed by the machinists. The record would support the Carrier's additional contention that such work required a minor part of the machinist's time on that shift.

We cannot reconcile the key difference in the claims set forth in this case -- whether the machinist was assembling new wheels onto axles or disassembling wheels off axles. If the former were the case, a holding that work was performed by the machinist that had been bulletined to the Carmen-Helper might be in order. If the latter were the case, a finding that the machinist, who was clearly authorized to operate a fork lift when necessary and appropriate, merely performed a task of clearing his work area. The burden is upon the Organization to prove the work as performed was the former; it has not done so on the record. Under such circumstances, we will dismiss the claim.

A W A R D

Claim is dismissed.

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 29th day of November, 1978.