

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rules 26(a) and 52(a) when they arbitrarily transferred the work of building an axle washer machine, located in the Maintenance Shop, North Little Rock, Arkansas, from the Machinists' Craft to the Boilermakers' Craft.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinists H. H. Haustein and H. Sheeks in the amount of forty (40) hours each at the punitive rate of Machinist for being denied the right to build this axle washer machine.

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 were given due notice of hearing thereon.

This case concerns allocation of work in the construction of an axle washer. The axle washer is approximately nine feet long, 34 inches wide and 33 inches high. It consists of a tank, supports, axle drive rollers and bearings, piping, and an electric motor which drives the axle drive rollers.

On or about March 14, 1975, Boilermakers at Carrier's mechanical facility at North Little Rock, Arkansas completed fabrication of the tank and channel supports (struts) of an axle washer. After the tank and supports were completed, Machinists installed the axle drive rollers and the bearings, which are the operating parts of the axle washer. Subsequent work was performed on the axle washer by the Sheet Metal Workers who installed the piping on top of the washer, and by Electricians who service the electric motor. The

Machinists claim that the work of the Boilermakers was improperly assigned and that construction of the tank and struts is work reserved to Machinists. The Machinists do not contest work on the axle washer assigned to the Sheet Metal Workers or to the Electricians. Pursuant to Third Party Notice the Boilermakers' Organization presented a submission and appeared before our Board with Carrier and the Machinists during oral argument.

In order to claim the work at issue for itself the Organization must show either clear and unambiguous language in the Controlling Agreement or exclusive system-wide performance as a matter of past practice. Carrier's assertion is unrefuted on the record of a "past practice of having work similar to that which is the subject matter of this claim performed by members of the boilermakers' craft". We must, therefore, turn to the language of the Controlling Agreement. As noted in our Award 7294, Rule 26(a) is a general rule relating to all shop crafts and incorporating by reference the specific Classification of Work Rules of each particular craft.

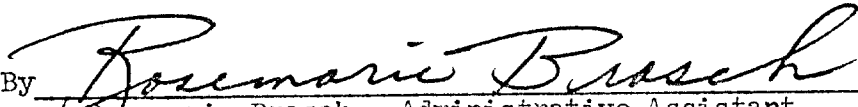
Upon careful consideration of the record before us we do not find that the Machinists' Classification of Work Rule (52(a)) reserves the work of tank and strut construction exclusively to Machinists. In fact, neither the word "tank" nor the word "strut" appears in Rule 52(a). It strains logical inference to the breaking point to suggest, as the Organization does, that such phrases as "tool and die making, tool grinding and axle truing" incorporate the work at issue. On the other hand, the Boilermakers' Classification of Work Rule (62(a)) specifically cites "laying out, building or repairing boilers, tanks, and drums; ... laying out and fitting up any sheet iron or sheet metal work made of 16-gauge iron or heavier ...; removing and applying ... stay rods and braces in boilers, tanks and drums; ... (and) channel iron ... work." The tank in question was constructed of 11-gauge iron (heavier than 16-gauge) and the struts were made of channel iron. Consistent with standards set forth in our Award 6762, therefore, we cannot find that assignment of the work to the Boilermakers violated the Machinists' Agreement. Accordingly, the claim is denied.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1979.

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J. W. GOHMANN

LABOR MEMBERS' DISSENT TO

AWARD NO. 7948, DOCKET NO. 7293-T

The majority in Award No. 7948 has reached a conclusion not squaring with the facts of record, the applicable agreement provisions and proper precedent Awards of this Division including his own.

Leading up to this erroneous decision was inexplicable rationale such as:

"Carrier assertion is unrefuted on the record of a "past practice of having work similar to that which is the subject matter of this claim performed by members of the boilermakers craft."

The record shows that the Carrier was referring to the building of "similar vats or tanks" and certainly not an integral part of a machine which was involved here. Certainly this Organization did not refute that others had built "cleaning vats", "degreaser vat", "boilers", "tanks", "drums", etc. which items were expressly stated as being "similar" to this machine reservoir. Such a reservoir is found in most machines either to hold gear chain lubricant or other cooling, cleaning, and/or lubricating liquids. The Organization did refute continuously that these so called "similar" items were anything but that.

Following up with further erroneous rationale to support this twisted logic the majority stated:

"It strains logical inference to the breaking point to suggest, as the Organization does that such phrases as 'tool and die making, tool grinding and axle truing' incorporate the work at issue."

What is really "strained to the breaking point" is the patience and anger of the Organization that a majority would deliberately, or carelessly, misquote and miss the entire thrust and position of the claim before him. Perhaps the thirteen month delay in rendering a decision after panel discussion, might have been contributory, but even a cursory review of the record would show the continuous position as being:

The original claim in pertinent part
"xxx building the above mentioned machine
a violation of Rule 52 of the controlling
Agreement occurred. Rule 52 in pertinent
part (A) Machinist work, including regular and
helper apprentices, shall consist of laying out,
fitting, adjusting, shaping, boring, slotting,
milling, and grinding of metals used in building,
assembling, maintaining, dismantling and installing
machinery, locomotives and engines (operated by
steam or other power), engine inspection; pumps,
engine jacks, cranes, hoist, elevators, pneumatic
and hydraulic tools and machinery, shafting and
other shop machinery, ##(etc.)###: oxyacetylene,
thermit and electric welding on work generally
recognized as machinist work; the operation of all
machines used in such work;##(etc)##"

In the first claim letter, all subsequent letters of handling on the property, including Carrier responses verifying, in the submissions and rebuttals of all parties, the panel discussions including the furnishing of precedential awards, etc., the premise and position of the Employees was that this work performance was on a machine and our claim was supported by our Classification of Work Rule language dealing with machinery.

It is unbelievable that such an attempt was made to bastardize and thereby diminish our claim. In the record leading to the majority's own Award No. 6762 this same Carrier tried the same subterfuges which

was readily apparent and led to a sustaining award. The same was true in other awards cited and furnished to this neutral such as Second Division Awards 7345 and 7379. Reading from Award No. 6762 portrays why these strong statements in disagreement are properly raised:

"Careful reading of the foregoing language indicates that the express provisions of Rule 52 (a) describes as machinists' work 'the laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building and assembling.... machinery... Pneumatic and hydraulic tools and machinery.... and other shop machinery'.... It is noted that no express qualification or limitation on the size or gauge of metal is contained therein. On the other hand, the language of Rule 62 (a) encompasses 'I-beams, channel iron, angle iron, and T-iron.... in connection with Boilermaker's work...' i.e., such material may be worked by Boilermaker's on condition that it is used in Boilermakers' work.

Consistent with the foregoing express language we find the work of building the frame of the coupler straightener; a piece of hydraulic shop machinery; was machinists work under the agreement xxx" (underscoring supplied)

Not only does this incense our above stated upset status, over our real claim thrust and position, but it is now compounded wherein the neutral mentions in the instant award that the gauge of iron in this case was:

"11-gauge iron (heavier than 16-gauge) and the struts were made of channel iron. Consistent with standards set forth in our Award 6762, therefore, we cannot find that assignment of the work to the Boilermakers violated the Machinists' Agreement." (underscoring supplied)

If there is any consistency within this illogical and twisted

rationale is is certainly beneath our level of comprehension.

Through such an abomination this neutral is encouraging the continuation of misassignment of work by this Carrier who's record is already established before this Board as the most flagrant. This majoritys' sudden switch from his previous holdings has to be suspect and thereby leading to this strong dissent to the erroneous Award 7948 which is without value as precedent.



George R. DeHague
Labor Member