

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey 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 Rule 26(a) and 52(a), when they arbitrarily transferred the work of removing four (4) large bolts that hold a cable rack and four (4) wheels and pull handle at North Little Rock, Arkansas.
2. That the Missouri Pacific Railroad Company be ordered to compensate Machinist S. E. Brucks for four (4) hours pay at pro rata rate of pay because Electricians were assigned to do 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.

The record indicates that the claimant was employed by the carrier as a Machinist and has the assigned work week of Monday through Friday, rest days Saturday and Sunday, hours 3:00 p.m. to 11:00 p.m.

On February 24, 1978, two electricians were assigned to repair a movable electric welding device in the electric shop. In order to perform the electrical repairs, it was necessary that the housing of the generator-welder be opened and that the generator-welder be removed from its undercarriage so that it could rest flat and immobile on a work surface. In order to do this, a cable rack and undercarriage had to be removed. To accomplish this, four (4) corner mounting bolts had to be removed. The removal of these four bolts by electricians is the subject matter of this claim. No work or repair whatever was performed on the cable rack, undercarriage or wheels.

The Organization claims a violation in that the work in question belongs to the Machinist Craft because the Machinists' Classification of Work Rule No. 52(a) of the controlling Agreement is clear and unambiguous. The Organization argues when the Carrier arbitrarily assigned Electricians to perform the removal of the component in this dispute, they violated the cited rules and in particular, that portion of Rule 52(a) "all other work generally recognized as Machinists' work". It also claims support of a consistent historical practice of a long period of time and cites Rule 26(a) of the controlling Agreement which reads in pertinent part:

"ASSIGNMENT OF WORK:

Rule 26(a). None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft." (emphasis added)

The Carrier defends on the grounds the disputed work is no more reserved by rule or practice to machinists than would the plugging in of all electric tools used by machinists be reserved to electricians. No skill was required to loosen four bolts to remove the cable rack and undercarriage. The work involved was minimal and unskilled and the claim, as well as being without support of rule or systemwide practice, is trivial in the extreme. It should be denied. Moreover, the compensation sought is in no way justified by the nature of, or time required to perform, the disputed work. The claim should be denied for that reason as well.

The claim in this docket also constitutes a jurisdictional dispute in that the work performed by the electricians in removing the cable rack and undercarriage from a movable electric-generator-welder to make repairs on the welder, is also work claimed by the electrical workers. The Electrical Workers, pursuant to the provisions of the act filed a submission which argued that the work involved is regularly scheduled work, requires special skill and is specifically encompassed in Rule 107(a) of the current Agreement which provides in pertinent part that:

"Rule 107 (a) Electricians' work, including regular and ~~helper~~ apprentices, shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all ... electric welding machines..." (emphasis added)

The Organization not only relies on the language of Rule 52(a) but also claims the existence of a prevailing past practice. It quotes several Foremen at various locations to support its jurisdictional contention. The conditions under which a claim of prior practice can be supported are comprehensively referenced in Third Division Award 5306 (Wyckoff), which held in pertinent part:

"A prior practice may have controlling effect when an agreement is adopted after the proposal and rejection of an amendment which provides for the abrogation of all prior practices (Award Nos. 3338, 2436, 1102), or when the agreement is ambiguous and reasonably susceptible of two interpretations, one of which is consistent with

"the practice (Awards Nos. 4366, 3149, 3002, 2466, 2278, 1178, 945, 213 and 72), or when the agreement is indefinite, an example of which is the usual Scope Rule. (Awards Nos. 4791, 4638, 4593, 4464, 4348, 4335, 4277, 4208, 4104, 3932, 3727, 3604, 3603, 3526, 2090, 1811, 2326 and 1320.)."

The Organization thus contends that a prevailing past practice has existed in regard to the work in question. The Board finds that while certain specific examples are cited, the citations are too limited to be elevated to a showing that the practice was historically and customarily instituted on a systemwide basis. In the absence of a specific unambiguous rules, a past practice must be shown to be systemwide.

The Machinist Organization has the burden of proving the essential elements of their jurisdictional claim. It acknowledges that it has no "quarrel" with the Electrical Craft claiming the removal or replacing of the welding machine "on the wheel or truck". However, the Organization claims jurisdiction for the work of the "removal of the four (4) large bolts" that holds a cable rack, four wheels and a pull handle.

Rule 52(a) must be read in its full context. The cited "bolting and breaking" in the Rule specifically refers only to "all joints on exhaust pipes and superheaters". There is no evidence or claim in the instant dispute that any work or repair was undertaken to the cable rack, wheels, undercarriage or handle, within the scope of Rule 52(a). The disputed work is found to be incidental to the craft.

The Board also finds that the Rules in question (i.e. Rule 52(a) and Rule 107(a)) are sufficiently ambiguous to bar establishing exclusive jurisdiction for the particular specific work in dispute (namely, the removal of four bolts to repair the electric welder). To do so would be to add language to the Agreement, which the Board cannot do.

Further, the Board, after a careful review of the record, finds that the claim of a sustainable past practice remains an unproved assertion.

On the entire record, the Board must deny such a claim and find the Agreement was not violated.

A W A R D

Claim denied.

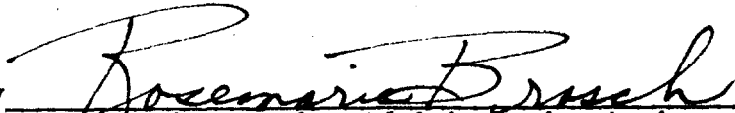
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Form 1
Page 4

Award No. 8813
Docket No. 8654-T
2-MP-MA-'81

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of November, 1981.