

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

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company Violated the controlling Agreement, particularly Rules 26(a) and 52(a), when they arbitrarily assigned Blacksmiths to build two (2) Engine lifters.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist H. H. Haustein and Machinist Carl Carpenter in the amount of One hundred twenty-eight hours (128) each, punitive rate of pay because Blacksmiths were assigned to build two (2) engine lifters on October 17, 1977.

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 were given due notice of hearing thereon.

Complainant Organization, the Machinists, alleges Carrier improperly assigned work belonging to employees of its Craft to employees of the Blacksmith Craft. The disputed work involved the building of two (2) engine lifters conceded by all parties at interest to be a tool specifically used to lift engines out of and put back into locomotives. The work commenced on October 14, 1977 and was completed on November 22, 1977. The two (2) engine lifters were built in the Blacksmith Shop at Carrier's Pike Avenue facility located in North Little Rock, Arkansas.

Complainant Organization asserts Blacksmiths performed the following specific job duties in building the engine lifters:

"*** A special grade of 1020 HRS heavy sheet iron was ordered for building the lifters.

The laying out of all the different component parts for the engine lifter to be cut out of the thick sheet iron were

laid out and cut by the Blacksmith, such as ten (10) pieces of iron for the lifting grabs in various and different sizes, two (2) lifting beam adapters, 1 3/4" x 46" with outside radius of 23 7/32" and inside radius of 13 1/2", two (2) lifting beam slings 2" x 17" x 58" with two (2) raised holes, one large hook hole with a 3" radius, eight pieces of linkage 1" x 6" x 10 1/2" with two holes, all above mentioned was then hand ground to remove sharp edges.

The Blacksmith also fabricate (sic) two (2) lifting beams by welding and pinning (sic) together the 2" x 18" x 179" length of iron with two (2) length of channel iron 3 1/2" x 8" x 21'4" long to support the beam, one on either side of the main lifting beam to prevent bending, three holes were drilled thru the beam and the two pieces of channel iron so to insert pins and were welded on both sides to hold the channel and beam together. The beam was then hand ground and laid out by the Blacksmith for the Machinist Helper in the Blacksmith shop to drill eighteen (18) holes in the beam.

The Blacksmith then cut twenty four (24) 1/8" x 4" round plates and welded to both sides of the holes so as to give a raised hole effect, the Blacksmith also laid out four (4) holes in the lifting sling and two (2) holes in the lifter beam adaptor for the Machinist Helper to drill."

Complainant Organization argues these job functions are reserved to employees of its Craft based on Rules 26(a), 51 and 52(a), the latter being its Classification of Work Rule, contained in the Controlling Agreement bearing effective date of June 1, 1960. These Rules read as follows:

Rule 26(a) provides in pertinent part:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each Craft, except foreman at points where no mechanics are employed."

Rule 51 captioned "MACHINISTS QUALIFICATIONS" provides as follows:

"Any man who has served an apprenticeship or has had four (4) years' experience at the machinists' trade, and who, by his skill and experience, is qualified and capable of laying out, and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing or adjusting the metal parts of any machine or locomotive whatsoever within a reasonable length of time may qualify as a machinist."

Rule 52 of the controlling Agreement reads in pertinent part:

"MACHINISTS CLASSIFICATION OF WORK: RULE 52(a). Machinists' 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, (See Note A) and installing machinery, locomotives and engines (operated by steam or other power), engine inspecting pumps, engine jacks, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, shafting and other shop machinery, ratchet and other skilled drilling and reaming except on drill presses (See Note B), tool and die making, tool grinding, axle truing, axle wheel, and tire turning and boring, air equipment, lubricator and injector work, removing, replacing, grinding bloting, and breaking of all joints on exhaust pipes and super-heaters; oxyacetylene, thermit and electric welding on work generally recognized as Machinists' work; the operation of all machines used in such work; machine and link grinding and passenger motor cars; removing, repairing, and applying trailer and engine trucks and parts thereof; cab stands or sheets, waste sheets, runningboard brackets, headlight brackets, hand rail brackets, smoke stack saddles, smoke stacks, sand boxes and done castings, locomotive spring and spring rigging work, driver brake and brake rigging (See Note C), and all other work generally recognized as Machinists' work. Machinist may connect and disconnect any wiring, coupling, or pipe connections necessary to make or repair machinery or equipment."

(Emphasis added)

Complainant Organization argues that the engine lifter is a tool of the Machinists' trade falling under the language of its scope of work as set forth in Rule 52(a), specifically that which relates to tool and die making and tool grinding. Further, Complainant Organization asserts Rule 52(a) does not contain any express qualification or limitations on the size or gauge of metal which would have prevented Carrier from making the subject work assignment to employees of its Craft.

Carrier defends its assignment of the subject work to employees of the Blacksmith Craft on the basis of two arguments; (a) Carrier asserts it was necessary that all of the accessories and the lifting beams themselves be heat treated, to wit:

"The lifting beam required stress relieve (sic) for one hour in the furnace at 1100 degrees - 1200 degrees and cooled in furnace to 400 degrees. The lifting grabs and pins were heat treated, quenched in oil and tempered. Other parts were annealed after burning and rough shaped prior to machining.";

and (b) on two previous occasions, one in 1954 and the other in 1968, engine lifters of the very same kind were built at its facility in North Little Rock,

and the assignment of work among the two crafts of Machinists and Blacksmiths was the same as that made involving the subject work. Carrier maintains that in neither 1954 nor 1968, did the Machinists file any claim contesting the work assignment given to either employees of its Craft or that given to employees of the Blacksmith Craft in connection with the building of these engine lifters. In not advancing any claim in past years, Carrier argues, the machinists' Organization has slept on its rights, if any, to this work, and that the previous two times this same work has been performed now constitutes a past practice acting as a bar against the machinists in claiming the disputed work. As an affirmative defense, Carrier argues that in view of the need to heat treat and temper, then work heat treated and tempered metal parts of the engine lifter, it was decided that Rule 88 of the Controlling Agreement which is the Blacksmiths' scope of work rule, as well as past practice, required assignment of the disputed work to Blacksmiths. In support of this latter argument, Carrier cites Rule 88 in relevant part as follows:

"Blacksmiths' work, including regular and helper apprentices, shall consist of welding, forging, heating, shaping, and bending of metal; tool dressing and tempering ... oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work."

Carrier argues that because of its Classification of Work, it is Blacksmiths which are most familiar with heat treating heavy metals and working with such heat treated metals. Therefore, Carrier maintains it was appropriate to make the subject assignment to Blacksmiths rather than machinists because the disputed work involved extensive heat treating.

Complainant Organization refutes Carrier's assertion that engine lifters were built at Carrier's North Little Rock, Arkansas facility in either 1954 or in 1968, stating it has no knowledge of any such work having taken place or been assigned at either time.

In response, Carrier notes engine lifters are very big in size and it could not have built such a device in secret in either 1954 or 1968.

The Blacksmith Organization adds that it has been the practice of Carrier at the North Little Rock facility to have Blacksmiths make tools where heating, tempering, forging and welding is necessary for the manufacture of the tools.

In our endeavor to make a determination as to which craft employees are entitled to the disputed work, we have found in our review of the case the following Second Division Award 6335 to be particularly instructive. In relevant part Award 6335 states:

"Work classification rules typically define the scope of a craft's jurisdiction in terms of the skilled functions performed and the equipment on which these functions are performed. For work to fall within the exclusive jurisdiction of a craft, it must be included in the expressly

described functions and equipment allocated to the craft."

We are persuaded that given this rationale matched against the specific job duties performed by Blacksmiths as set forth above, that the Carrier did, to some extent and degree misassign the disputed work. We however, are unable from the evidence before us, to assess the extent this work was improperly assigned. It appears from the record that since the work in question occurs so infrequently (three times over 23 years), that the appropriate remedy would be to caution Carrier that for the next time this work is to be performed to be more accurate in the assignment of this work.

Finally, we find we must deny the monetary portion of this claim in its entirety as the uncontroverted record reflects that both Claimants were working their regular assignments at all times material to the time period within which the disputed work occurred.

A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of March, 1982