

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
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(Toledo, Peoria and Western Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement the Toledo, Peoria & Western Railroad Company improperly assigned Machinist work to a locomotive Engineer at Effner Terminal in Effner, Indiana.
2. That, accordingly, the Carrier be ordered to compensate Machinist H. L. Markum eight (8) hours pay at straight time 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 employes 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 developments giving rise to this claim are as follows: On September 13, 1980 Carrier assigned a Locomotive Engineer to couple locomotive #2010 to a consist of locomotives comprised of locomotives #900 and #103 at Carrier's Effner rail situs, located Effner, Indiana. The Organization contends that the aforesaid assignment violated Memorandum #11, dated December 11, 1959, and also Machinist Special Rules 50 and 51 of the Controlling Agreement. Memorandum No. 11 is verbatimly referenced hereinafter:

"It is agreed between the Company and the International Association of Machinists that the Machinists will continue to uncouple and couple diesel units, adjust and test air equipment and prepare diesel units for use in or out of multiple operation, however, the following will apply:

1. In the event other than Machinists, including Engineers and Firemen, perform the above work at terminals (on roundhouse tracks or tracks where engines are normally tied up) one machinist to be later designated will be paid one day's pay of eight (8) hours at straight time rate in each instant case.

- "2. In the event other than Machinists, including Engineers and Firemen, perform the above work within any terminal limit (not on roundhouse tracks or tracks where engines are normally tied up) one machinist to be later designated, will be paid one (1) call at four (4) hours straight time rate in each instant case.

The above will not apply at intermediate points coming outside the above terminal limits."

The Organization asserts that Effner has been historically considered as a terminal and must still be considered as such, since units tie up at Effner and replacement units are dropped off at that location. It avers that the work performed on the claimed date is recognized as Machinists' work and covered by Rule 51, the Organization's Classification of Work Rule. It notes that Machinist employees have been sent to Effner for many years performing the work encompassed by Memorandum No. 11 and argues that a firmly established practice has been institutionalized at this location. In effect, it maintains that Effner is a terminal as defined in Memorandum No. 11 and the work performed by the Locomotive Engineer was violative of this Agreement.

Carrier contends that the disputed assignment was performed by locomotive engineers at many other locations on the system where mechanical forces are not employed. It asserts that the work was not so technically complex as to accrue only to the Machinists or exclusively reserved by Rule 51 to that craft. It avers that the work cannot be considered maintaining, as no other maintenance or repairs were performed nor was anything installed. It notes that the only work performed on September 13, 1980 was coupling one locomotive to two locomotives and hooking up the air hoses and jumpers and turning two switches in the cab of the locomotive. It asserts this work is routinely performed by locomotive engineers at all locations, except East Peoria where mechanical forces are employed.

As to the application of Memorandum No. 11, Carrier argues that it does not apply at intermediate points outside terminal limits. By definition, it observes Memorandum No. 11 recognized the right of any craft, including engineers and firemen to perform this work at intermediate locations, but it contends that Effner is no longer a terminal for the trains involved in this claim. It acknowledged that claims were paid in the past for work that was covered by Memorandum No. 11 when Effner was a terminal, but argues that Effner is now an intermediate point. In particular, it asserts that when it purchased the fifty-five (55) miles of Penn Central Trackage, after the Penn Central bankruptcy, and then operated six (6) additional miles on trackage rights over Conrail to Logansport, Indiana, Logansport then became Carrier's eastern terminal. It avers that between April 1, 1976 and December 16, 1979, Effner remained a terminal because the fifty-five (55) miles of trackage purchased between Effner and Kenneth, Indiana was in

deplorable condition and safe only for a speed of 10 miles per hour. Under these circumstances, it argues it was not possible to operate crews from East Peoria to Logansport under the Hours of Service Law. Moreover, it points out that when it was mandated to reach an Agreement, consistent with the requirements of the Regional Rail Reorganization Act of 1973 with all employe organizations prior to the purchase of the fifty-five (55) miles of track from the Penn Central, its agreement with the United Transportation Union on December 7, 1975 eliminated Effner as a terminal. Paragraph 4 of Article 2 of this Agreement reads:

"(A) When regular through assignments are established to run from East Peoria, Illinois to Logansport, Indiana, in both directions, the following will apply:

(4) East Peoria will be the home terminal and Logansport will be the away-from-home terminal for regularly assigned employees operating between Logansport and East Peoria. Logansport will be the home terminal for regularly assigned former Penn employees who have accepted employment operating exclusively between Logansport and Effner."

Carrier asserted that the above changes eliminated Effner as a terminal for through trains in December 16, 1979 and Effner was thereafter recognized as an intermediate point. It notes that as a result of this change, it reached an agreement with the Brotherhood of Railway Carmen on July 18, 1978 wherein three (3) Car Inspector positions were abolished at Effner.

The United Transportation Union (UTU) did not intervene in the dispute as a third party of interest, but it submitted a letter to the Board, dated November 16, 1981. The UTU asserted that Effner is still designated as a terminal under UTU Agreements and is a terminal for trains operating from East Peoria and Effner and for trains operating between Logansport and Effner. Moreover, it argued that under Article 4 of the December 7, 1975 Agreement (UTU and TP&W), Carrier recognized Effner as a terminal.

In response to this letter, Carrier argued that the UTU failed to mention that Effner was eliminated as a terminal for trains operating from East Peoria to Logansport after run through was established. It averred that Effner is no longer a terminal for all TP&W trains and more pointedly, it is no longer considered a terminal for the trains involved in the Machinists' dispute herein.

In our review of this case, we agree with the Organization's position that a violation of Memorandum No. 11 occurred when a locomotive engineer performed the disputed work. We recognize, of course, the changes that took place as a result of the additional trackage acquired in 1976, but we cannot conclude that Effner is an absolute intermediate point on Carrier's system. This is a pivotal distinction. By Carrier's own admission, it acknowledges that Effner is a terminal, but it qualifies this acknowledgement by noting that trains running from East Peoria to Logansport no longer use Effner as terminal. Inasmuch as this statement is a correct depiction of the changed through train service, it does not completely eliminate Effner as a terminal situs. Memorandum No. 11 does not delineate nor define a gradation of terminals, it merely states that Machinists will be paid a specified rate under specified conditions when employes other than machinists perform the work set out in the defining preamble of the Memorandum at terminals. It appears that west bound trains must pick up locomotives at Effner and bring them to Peoria and east bound trains drop off diesel locomotives at the same location. Moreover, Article 4 Definite Terminals Defined of the December 7, 1975 Agreement identifies Effner as a terminal. This latter agreement was negotiated pursuant to the rail reorganization described herein. Accordingly, since Memorandum No. 11 speaks of terminals and Effner is a terminal however its changing status, we are constrained by the parties' own articulation of the defining terms of Memorandum No. 11 to construe the Memorandum as it is plainly and clearly written. We cannot by judicial construction add an interpretation that however practical and efficient from an operational standpoint, is at variance with the provision's clear and unambiguous language.


On the other hand, we agree with Carrier that the second paragraph of Memorandum No. 11 is applicable herein since the coupling of the units on September 13, 1980 occurred on the Main Line at Effner and not on any roundhouse track or tracks where engines are normally tied up. Paragraph 2 of Memorandum No. 11 requires in part that if an employe other than a machinist performs the defined work within any terminal a penalty is to be imposed. The only precluding qualification is if the work is performed on roundhouse track or tracks where engines are normally tied up. Based on this find, the payment provided in paragraph 2 of Memorandum No. 11 shall apply.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of August, 1984.