NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 SECOND DIVISION Award No. 12518
Docket No. 12382-T
93-2-91-2-177

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (International Association of
(Machinists & Aerospace Workers
(
(Illinois Central Railroad

STATEMENT OF CLAIM:

"That the Illinois Central Railroad, hereinafter referred to as Carrier or Company, has violated Rule 33 of the Illinois Central Railroad - International Association of Machinists Agreement, as revised September 30, 1985, when the Company improperly assigned machinists' work of inspecting, fueling, sanding, and servicing locomotives in McComb, Mississippi, to carmen during the month of January, 1991.

That the Illinois Central Railroad compensate the claimant, Machinist Jerry Rayborn, forty-eight (48) hours pay at the machinists' pro rata rate for work improperly assigned to and performed by carmen during the month of January, 1991, and properly assign machinists' work of inspecting, fueling, sanding, and servicing locomotives to machinists at McComb, Mississippi."

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.

As Third Parties in Interest, the Brotherhood Railway Carmen/Division of TCU and the International Brotherhood of Firemen and Oilers were advised of the pendency of this dispute. The International Brotherhood of Firemen and Oilers filed a Submission with the Board. The Brotherhood Railway Carmen/Division of TCU chose not to file a Submission.

There is disagreement between the parties with respect to the exact nature of the work performed which prompted the claim here under consideration. The Organization in its Submission describes the work as inspecting, fueling, sanding, and servicing locomotives. The Carrier takes exception to the contention that inspection was part of the work performed. In so doing, it points out that during processing of the claim on the property, the inspection of locomotives was not included. Consequently, it would be improper for this Board to consider the inspection of locomotives in reaching a decision as to whether the work performed belongs exclusively to Machinists. The record reveals that the February 18, 1991 claim described the work performed as fueling, sanding, and servicing locomotives. The April 2, 1991 appeal letter describes the work performed in the same manner. In addition, a January 18, 1991 appeal letter over the same work, but a different claim refers only to work of fueling, sanding, and servicing. The April 23, 1991 appeal letter on this claim contends that the work of servicing locomotives is machinists' work and then includes in the next paragraph a statement that, "Additionally, the work of inspecting the mechanical components and functions thereof on diesel locomotives is also machinists' work...."

From the foregoing and the record it is clear that the preponderance of credible evidence supports the Carrier's position that the work performed and discussed on the property was fueling, sanding, and servicing locomotives.

The Organization contends that the Carrier violated the Agreement by assigning other than Machinists to perform the work at McComb, Mississippi. In so doing, it points to Rule 54 of the Agreement, i.e., the Classification of Work Rule. That Rule reads as follows:

> " Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop

machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring (excepting portable journal truing machines as operated by Carmen), engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work.

On running repairs, machinists may connect and disconnect any wiring, coupling or pipe connection necessary to make repairs to machinery or equipment."

Additionally, it asserts that Rule 33, Assignment of Work, supports the position that the work belongs to the Machinists' craft. Rule 33 provides in pertinent part:

"Rule 33. None but mechanics or apprentices regularly employed as such shall do mechanic's work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts." (Emphasis added)

A careful study of the language of Rule 54 indicates that there is no inclusion in the Rule of fueling, sanding, and servicing locomotives. The Rule simply does not support the Organization's position.

Rule 33 as described in the underlined portion only applies if the special Rules of the craft include the work performed. As noted previously, the applicable Rule 54 does not include the work here under consideration. Consequently, the Organization has not proved that the Agreement was violated.

Additionally, the Organization argues that when the force of Firemen and Oilers was furloughed at McComb, the work here under consideration automatically accrued to the mechanics at that location. While the work was assigned to the Machinists for a period of time, there is no provision in the Agreement or past practice to support a claim that the work automatically accrued exclusively to the Machinist craft. The record indicates that as

recently as November 1988, the work was accomplished by a Roundhouse Laborer. When the Laborer was furloughed on November 29, 1988, the work was assigned to a Machinist.

The record reveals that members of the Firemen and Oilers Organization had done the disputed work in the past and had filed claims related to the assignment. In accordance with provisions of the Railway Labor Act, that Organization was notified of the dispute here under consideration. It exercised its rights and presented a written Submission to this Board. The Firemen and Oilers' Submission expresses a view regarding the Machinists' position of exclusive rights to the work that is congruent with that of the Carrier. In addition, it points out that such work is currently being accomplished by its members in several locations on the Carrier's property. In view of the general practice on the property, the Machinist Organization has not claimed any right to perform such work on an exclusive basis system-wide. This claim is made with respect to the work at McComb only. The Organization attempts to buttress that claim by pointing out that the Agreement covering the Carmen who did the work does not include such work in its Classification of Work Rule. That contention is accurate. However, the fact that neither Agreement contains Rules regarding the work supports the Carrier's position that such work is not the exclusive province of any of the Crafts.

A long list of Awards by this Board have held that absent clear and unambiguous Agreement language, the Organization must establish the fact that the work under consideration has historically and exclusively been performed by the craft on a system-wide basis. In this case the Organization does not even claim system-wide practice. It is obvious from the record that no such practice exists.

In view of the foregoing and the entire record, we must conclude that the claim lacks merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1993.