

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That on November 8 and 11, 1947, the following employes, by direction of the Carrier, performed machinists' work in connection with the installation of a hoisting machine in the Wheel and Axle Shop at Bloomington, Illinois:

E. E. Price	J. R. Swearingen
E. W. Koerner	V. Priller
A. L. Gross	A. H. Baker
J. J. Whitty	H. Priller, Foreman

(2) That the above named employes be reimbursed for the difference between compensation received at their regular rates and what they should have received at the machinists' rate.

EMPLOYES' STATEMENT OF FACTS: Previous to November 8, 1947, the Gulf, Mobile and Ohio Railroad Company installed a new lathe in the Wheel and Axle Shop at Bloomington, Illinois. Because of this new installation, the Carrier found it necessary to set up a stationary hoist to handle the wheels brought to and from this new lathe. The shop Machinists set up this machine in accordance with Rule 58 of their schedule with the Carrier.

However, in order to complete the installation, it was necessary to raise a 14" "I" Beam, weighing approximately 2,300 pounds, to the top of the runway on which this beam was to work. This "I" beam had been previously fabricated by the shop Boilermakers, and roller bearing races for this beam had been made by the shop Machinists. The Machinists, because they lacked the necessary equipment, were unable to raise this heavy beam to its proper location in order to thus complete the installation of the hoist. The B&B forces were called in. They set up the necessary rigging and did raise this "I" beam to its proper location. The Machinists then completed the job.

The B&B forces performed this work referred to on November 8 and November 11, 1947.

ing, the erection of smoke stacks and smoke jacks, repair and construction of stock pens, water tanks, turntables, cinder pits, track and stock scales, platforms, shelvings, lockers, tables, and other fixtures made in and permanently recognized as B. & B. work, except such work as may be contracted; but does not include mechanics' work manufactured in or sent to the shops for repairs.

Employees covered by this article will not be expected to perform work of any other craft, nor will an employee of any other craft be required to perform work coming within the scope of this article except in an emergency."

Particular attention is called to that part of the said article which provides that Bridge and Building employees' work shall consist of all woodwork in the constructing and maintaining of all shops and "other fixtures made in and permanently recognized as B. & B. work, except such work as may be contracted; but does not include mechanics' work manufactured in or sent to the shops for repairs." The rigging and the raising of the beam for which claim is here made clearly follows within the definition of Bridge and Building employees' work and, as pointed out heretofore, **has been previously recognized as Bridge and Building work.**

Without in any way waiving our contention as set forth above, this respondent wishes to point out, as a practical proposition, that if, for the sake of argument only, Bridge and Building employees had not been used to raise the "I" beam, certainly, machinists would not have been so used but that laborers in the shop at Bloomington would have performed the work and the only machinist used would have been the one that fastened the beam in place after it had been raised. This machinist would have, as was, been assisted by a machinist helper. In other words, in performing the work here in question shop laborers would have been used and **not** machinists.

Incidentally two of the claimants here were not available for work on November 11 in that they did not work on that date in any capacity at their own request, and one of the claimants was on his vacation for which he was paid.

In conclusion, the Carrier wishes to again stress the fact that the work for which this claim is made was not work belonging to a machinist and that the work was properly performed by Bridge and Building employees who were compensated in accordance with the provisions of the applicable agreement. This Board has no authority to interpret the agreement applicable to machinists nor has it authority to write into the agreement applicable to Bridge and Building employees a provision providing for payment to such employees a rate heretofore negotiated and applicable to the class or craft of Machinists. Such work as is here in question has, for a number of years, been properly performed by Bridge and Building employees without protest. Based upon the applicable agreement as heretofore construed by the parties thereto, the instant claim is without merit and this respondent respectfully requests that your Board so find.

(Exhibit not reproduced.)

OPINION OF BOARD: This claim is made in behalf of eight named B&B employees, including a Foreman, for the difference in pay on November 8 and 11, 1947 between what they actually received at their regular rate as B&B employees and what they would have received for the services rendered, as hereinafter set forth, if paid at machinist's rate. The time actually consumed in performing these services, and for which this claim is made, is set forth in the Employees' Statement of Facts and will not be restated here.

The record discloses that the Carrier installed a permanent stationary hoist in its Wheel and Axle Shop at Bloomington, Illinois. A part of the installation called for the raising, putting in place, and fastening of a 14 inch "I" beam weighing about 2300 lbs. Because the machinists, who had

set up the machine, lacked the necessary equipment to raise the "I" beam and put it in position B&B forces were called for that purpose. These B&B forces, Claimants herein, set up the necessary rigging and raised the "I" beam to its proper location. Machinists then finished the job by fastening it in place by means of bolts. It was fastened to and became a part of the hoist. The work performed by the B&B forces was done on November 8 and 11, 1947.

Carrier contends that under The Railway Labor Act this Division is without jurisdiction to determine this dispute. As to this contention we find it to be without merit. Here recovery is sought under Article 50 of the Brotherhood's Agreement. This Agreement is properly before us as the employes covered thereby are within those referred to in Section 3, First. (h) as coming within the jurisdiction of this Division. Rules of the Mechanical Crafts' (Machinists) Agreement are here used not for the purpose of determining the rights of any machinists thereunder, of which this Division does not have jurisdiction, but as evidence of the classification of the work here performed by these employes and the rate which Carrier has contracted to pay for the performance thereof, for which Claimants here seek recovery under the rules of their own Agreement. For similar holdings of this Division, see Awards 674, 1544 1598, 2169, 3489 and 4139.

Article No. 50 of the Brotherhood of Maintenance of Way Employees Agreement provides:

"Employes assigned to a higher rated position of one hour or more, will be paid the higher rate for the time so assigned.

Regular employes temporarily assigned to lower rated positions in any one day will not have their pay reduced."

As to whether these men were qualified as machinists is not here in issue. The question is, did the Carrier assign them to and have them perform machinists' work? While there is the fact that in doing the work hereinbefore set out the "I" Beam was attached to the building, however, the primary and only purpose of its being lifted into place and fastened was to complete the installation of the permanent stationary hoist, of which it is a part. This work is classified as machinist's work under Rule 58 of their Agreement.

From the claim as here filed it appears that all of the named Claimants are asking that they be paid at the regular rate of a machinist. However, from the entire record it would appear that on the property the rate of machinist foreman was asked for Claimant H. Priller, B&B Foreman. Since the work performed is that of machinists and since the claim, as here made, is for that rate it will be allowed on that basis. Of course, if the rate of a B&B Foreman is higher than that of a machinist then the B&B Foreman, under Rule 50, would be entitled to whichever is the higher.

Carrier states that two of the Claimants were not available on November 11, 1947 and that another was on vacation on that date. However, the claim for any one claimant is not in excess of eight hours. Therefore, in the absence of any affirmative showing, we will assume that these three men performed the hours of service, for which they here make claim, on November 8, 1947.

While Carrier says that from time to time in the past similar work has been done by B&B employes, without protest, however, this Division has often held that even long continued acquiescence in practices by the parties on the property does not operate to alter or change a rule of an agreement that is clear and unambiguous.

We find the claim to be meritorious and that it should be allowed on the basis of a machinist's rate of pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained on the basis of a machinist's rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.