

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 13728

Docket No. 13502

03-2-99-2-104

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(International Association of Machinists and  
( Aerospace Workers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Dispute - Claim of Employee:

- (1) That the Union Pacific Railroad (hereinafter referred to as Carrier or Company) violated Rules 26 and 52 contained in the Agreement dated June 1, 1960, between the International Association of Machinists and the Missouri Pacific Railroad Company as well as custom and past practice when on January 6, 1999, it departed from a fourteen (14) year practice at its North Little Rock, Arkansas (Jenks) Locomotive Overhaul Facility of assigning Machinists exclusively to load and unload traction motors to and from flat rail cars located outside the Jenks Shop.
- (2) That the Carrier be ordered to reassign the disputed work back to the Machinists Craft and compensate Machinists J. K. Bennett, A. R. Pearson and S. Jones (hereinafter referred to as claimants) three (3) hours each daily at the journeyman machinists rate of pay retroactive from January 6, 1999, and continue such compensation until the duties of loading and unloading traction motors are returned to members of the Machinists Craft."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and chose to file a Submission with the Board.

The record developed on the property reflects the following. On January 29, 1999, the Local Chairman filed the claim with the Director Locomotive Shops. The claim asserted, "Since January 6, 1999 for three hours every day the carrier has assigned Three Electricians to load traction motors in flat cars which has been assigned work for Machinists for the past fourteen years."

On February 22, 1999, the Director Rebuild Operations responded, in relevant part:

"As you well know, we recently stopped loading traction motors using the My-Jack. We have installed an overhead crane to replace the out of date My-Jack. While the operating of the My-Jack was the responsibility of the machinist craft, the operation of overhead cranes is not the exclusive rights of your craft. The operation of these cranes have been done by every craft in the shop for many, many years."

On March 2, 1999, the Organization appealed to the General Director Labor Relations. The appeal advised, in part:

"In the penultimate paragraph of [the Director Rebuild Operations'] letter, he tries to lead one to believe that the Organization's claim is concerning the operation of the overhead crane used to load and unload the traction motors. However, that particular portion of the task was not disturbed, the machinists still operate the crane used to load and unload

the traction motors. The issue involved in this dispute is that actual loading and unloading of the traction motors to and from the rail flat cars which is now being performed by members of the Electrician's Craft."

The General Director Labor Relations denied the claim, stating:

"Carrier has installed an overhead crane to replace the out of date My-Jack. While the operating of the My-Jack was the responsibility of the machinist craft, the operation of the overhead crane is not the exclusive right of your craft. The operation of overhead cranes have been performed by various shop craft employees in the Jenks Shop for many years."

The General Chairman responded:

"The issue in this dispute is not the operation of an overhead crane . . . Machinists are still assigned the duties of operating the involved crane, this dispute deals with the actual loading and unloading of the traction motors to and from the rail flat cars which entails connecting the lift hooks to the traction motors, and disconnecting same after the motors have been guided in their proper position for transport."

Before the Board, the Carrier argues that the Organization failed to prove a systemwide practice of Machinists exclusively performing the work in question. However, the Carrier never raised such an argument during handling on the property. Accordingly, we may not consider it for the first time here.

The Carrier also argues that the work has changed. It previously was performed using a My-Jack crane, the operation of which was the responsibility of Machinists. The Carrier switched to using an overhead crane, which is not the exclusive work of Machinists. The IBEW similarly seizes on the change from My-Jack to overhead crane, arguing that the operation of electric overhead cranes has been exclusively performed by electricians.

However, the claim did not concern the operation of the crane. Each time the Carrier alluded to the switch from a My-Jack to an overhead crane, the Organization responded that it was not claiming the operation of the crane, but rather the actual

loading and unloading of the traction motors, i.e., the work of connecting and disconnecting lift hooks. The Carrier simply did not respond to the claim that the Organization presented. It certainly never denied that the work claimed by the Organization had been performed exclusively by Machinists for the preceding 14 years. On the state of the record developed on the property, we are compelled to find that the Carrier violated the Agreement.

We turn now to the question of remedy. We observe that the claim asks that "Carrier be ordered to reassign the disputed work back to the Machinists Craft..." It is well-established that the Board lacks authority to order such injunctive relief. See Second Division Award 12597.

The claim further asks that the Carrier be ordered to "compensate Machinists J. K. Bennett, A. R. Pearson and S. Jones (hereinafter referred to as claimants) three (3) hours each daily at the journeyman machinists rate of pay retroactive from January 6, 1999, and continue such compensation until the duties of loading and unloading traction motors are returned to members of the Machinists Craft."

The record reflects that the Local Chairman filed the claim on January 29, 1999. The claim alleged:

"Since January 6, 1999, for three hours every day the carrier has assigned Three Electricians to load Traction Motors in flat cars which has been assigned work for Machinists for the past fourteen years."

On February 22, 1999, the Carrier's General Director Rebuild Operations responded:

"The Carrier has not assigned three (3) people of any craft to do that task. Sometimes there are two (2) machinists doing it; sometimes and almost always at least one (1) machinist is doing the job."

On March 2, 1999, the General Chairman asserted:

"The facts are that beginning on January 6, 1999 and through the month of January, the Carrier assigned three (3) Electricians to load and unload traction motors on the flat cars. However, after the Organization's claim

was submitted the Carrier removed one (1) of the three (3) Electricians leaving two Electricians to load and unload traction mowers.”

No further discussion about the extent to which other than Machinists performed the disputed work appears in the record. Furthermore, there is no evidence in the record concerning the extent to which other than Machinists performed the disputed work. Accordingly, we shall order the Carrier to compensate the Claimants for each time other than Machinists performed the work in question, beginning January 6, 1999, and continuing thereafter in an amount equal to the number of hours employees other than Machinists performed the disputed work.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of June 2003.