

**Award No. 2841
Docket No. 1966
2-CRI&P-MA-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the overhauling of Diesel Locomotive air compressors comes within the scope of the current agreement as Machinists' work.

2. That the Chicago, Rock Island & Pacific Railroad Company, on February 16, 1954, violated the current agreement when Diesel Locomotive No. 643 air compressors, identified by serial numbers 139525 and 138003 were assigned to a contractor for overhauling, which action thereby damaged the employees of the Machinists' Craft.

3. That accordingly the Chicago, Rock Island & Pacific Railroad Company be ordered to:

a) Desist from unilaterally transferring Diesel Locomotive air compressor work out of Silvis Shops to other companies.

b) Compensate Machinists Peter Lousberg and Robert Smith in the amount of five days each or divide between them the number of labor hours which the contractor charged for such work, whichever is greater, all hours to be paid for at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At Silvis Shops, Silvis, Illinois, the carrier maintains a large modern diesel locomotive back shop, where machinists are regularly assigned to completely overhaul diesel locomotives, diesel engines and component parts. Various sections of this shop are set

diate their previous interpretation of the memorandum of agreement of October 16, 1948 and substitute therefor a new interpretation, namely, that under no condition would it be necessary to send equipment out for repairs, rebuilding or exchange. Such a position is untenable in view of the language contained in the October 16, 1948 memorandum of agreement which clearly recognizes the possibility of necessity and uses that word to so signify:

"... necessary to send to the factory for repairs, rebuilding, replacement or exchange."

The organization's reversal of attitude in this case creates a serious situation. The carrier, since the negotiation of the October 16, 1948 memorandum of understanding understood the organization's position to be that "necessary" did not apply when shop forces were furloughed and that it did apply if full forces were working and they were unable to get the work out in sufficient time. This consistent attitude, expressed by the organization, verified by correspondence, cited in this submission, confirms the carrier's position that the practice of sending out maintenance of equipment work under such circumstances as herein described constitutes a necessary action which is countenanced under the terms of the agreement.

The facts in this case support the carrier's position that it was necessary to exchange these air compressors within the provisions of the memorandum of agreement of October 16, 1948, and hence not a violation of the agreement.

For these reasons, the claim should be denied and we so petition your Board.

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.

The parties to said dispute were given due notice of hearing thereon.

This claim is for pay for two (2) machinists for the number of hours paid for by the carrier to General Motors for overhauling two (2) air compressors. The parts in question, which were identified by their serial numbers, were taken from the company shops at Silvis, Illinois to La Grange, Illinois and returned afterwards to Silvis.

The brotherhood claim is based on Rule 53, which states in part:

"Machinists' work shall consist of * * * building, assembling, maintaining, * * * pumps * * * and air equipment, * * *."

and also on Rule 28 which is to the effect that:

"None but mechanics * * * regularly employed as such shall do mechanics' work * * *."

The carrier defends the claim on the basis of a memorandum agreement dated October 16, 1948 which contemplates a continuance of "present practices as to handling of * * * work which may be necessary to send to the factory * * *."

The brotherhood's answer to this position is that it was not "necessary" to send these compressors to a factory; that the machinists have the skill to do the work and that the carrier could have supplied any required components.

This Division has previously ruled in a similar case between the present parties that the carrier's actions violated the cited rules and did not come within the exception as "necessary" work (Award 1866). We adhere to the guidance of that award.

AWARD

The claim is sustained to the extent that claimants shall be paid the same number of straight time hours as were paid for by the carrier for the instant repairs.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1958.