

Award No. 4171
Docket No. 4052
2-GN-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the overhaul and repair of pumps and spray nozzles for Baldwin Engine No. 139 was contracted by the Carrier to the Diesel Service Company, Minneapolis, Minnesota.

2. That the Carrier accordingly be ordered to compensate Minneapolis Junction Roundhouse Machinists W. Scheidegger, D. Kosloske and W. Therrien each in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On or about June 14, 1960 the carrier at Minneapolis Junction Roundhouse contracted the work of overhauling and repairing pumps and spray nozzles for Baldwin Engine No. 139 to the Diesel Service Company, Minneapolis, Minnesota. Serial numbers for the pumps involved are Nos. 800410, 800415, 800418, 800419, 800423, 800424, 800426, and 800427. Serial number for the eight nozzles involved is No. AKK275U3295A.

The dispute was handled with carrier officials designated to handle such affairs, all of whom declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the work involved in this dispute is that of employees of the machinist craft under the provisions of Rule 49, machinists' classification of work, and established practice.

Similar work to that herein claimed has been performed by machinists at Minneapolis Junction Roundhouse on many occasions in the past. Further, Baldwin Engine No. 139 was modified in the first instance by machinists at

Under such circumstances it would be foolish to purchase special equipment, and the carrier has no intention of doing so. If the repairs could not be performed by the Diesel Service Company, then the carrier would throw away the unserviceable equipment and replace them with new ones because that would be more economical than equipping the claimants to perform the work. Under the circumstances, a sustaining award in this case will accomplish no useful purpose for the claimants.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to have its equipment repaired in whatever manner is necessary or desirable, unless the power to make such decisions has been limited by law or by some clear and unmistakable language in the collective bargaining agreement.
2. In order to carry its burden of proof in this case, the organization must show that it has secured the exclusive right by agreement and practice to perform repairs and maintenance on the equipment involved.
3. The organization has never cited any rule in the agreement or other evidence to support its case while handling this claim on the property.
4. The carrier has shown that it has been the unprotested practice to send Baldwin fuel pumps and spray nozzles to the Diesel Service Company.
5. Many awards of this Board have held that machinists do not have the exclusive right to perform repairs on various types of equipment not specifically named in the language of the agreement, especially where machinists have not exclusively performed such work in the past.
6. The carrier does not have the special machines necessary to make the repairs involved in this case, and it would not be economically feasible to acquire it.

For the foregoing reasons the carrier respectfully requests that the claim of the employees be denied.

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 employees 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 were given due notice of hearing thereon.

This claim presents the question of whether or not carrier violated the agreement of the parties when it contracted with the Diesel Service Company of Minneapolis, Minnesota, for the overhaul and repair of pumps and spray nozzles for Baldwin Diesel Engine No. 139, instead of having the work done in its own shops.

From the record it is learned that this particular Baldwin engine, Unit No. 139, was modified as a test project some years prior to the instant claim. It did not meet expectations. The record also indicates that this unit and similar ones will be retired from service as soon as economically feasible.

While true that machinists have repaired injectors and fuel pumps for Baldwin engines on this property in the past, this was largely a matter of replacing broken or worn parts with new ones, an expensive process. The alternative, reconditioning parts that can be brought back to proper tolerances, would require acquisition of machines not possessed by carrier and of considerable cost to procure. See Award 1373, where, with reference to contracting out of work by carrier it was said:

"One exception may be said to exist when it appears that the work requires equipment of a type which the carrier either cannot obtain, or, if obtainable, it can only be obtained at a cost that is excessive or exorbitant, considering the amount of work involved."

That being the situation, the reconditioning of the fuel pumps and injector spray nozzle assemblies was accomplished by contract as above mentioned, the Diesel Service Company, as a factory service and parts distributor, having the necessary machines and being in a position to do the work at a price lower than the cost of complete replacements parts.

The record indicates that such work, without protest by the machinists, had been done previously for carrier by the Diesel Service Co. and claimants do not cite contractual language in the agreement of the parties from which it may be held that the machinists, and they only, had the right to perform the work, to the exclusion of outside persons. Awards 1777, 3270 and 3630.

Under all the facts and circumstances here presented to us, we do not find that there was a violation of the Agreement. Therefore, the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4171

From the following statements it appears obvious the referee did not consider the entire record:

"From the record it is learned that this particular Baldwin engine, Unit No. 139, was modified as a test project some years prior to the instant claim. It did not meet expectations. The record also indicates that this unit and similar ones will be retired from service as soon as economically feasible."

and further,

"While true that machinists have repaired injectors and fuel pumps for Baldwin engines on this property in the past, this was largely a matter of replacing broken or worn parts with new ones, an expensive process. The alternative, reconditioning parts that can be brought back to proper tolerances, would require acquisition of machines not possessed by carrier and of considerable cost to procure."

The record shows the fuel pumps and injector nozzles in this case are not only used on Baldwin engines but on other Diesel engines owned by this carrier and further these Baldwin engines are not being retired, but to the contrary are being repaired for further service. In the record, as Carrier Exhibits, are actual photo reproductions of itemized bills from the Diesel Service Company of Minneapolis, which reveals that the major cost and amount of work was replacement of parts—the same as the employes performed on the carrier property.

The record further shows that one machine necessary was a metering machine which the carrier owned and sold to the aforementioned Diesel Service Company in Minneapolis.

In fact, the employes very clearly point out that no special tools or machines are necessary and the carrier at no time disproved this. This was also very clearly pointed out in a demonstration by the employes to the referee during oral hearing.

The following statement made by the referee,

"The record indicates that such work, without protest by the machinists, had been done previously for carrier by the Diesel Service Co. and claimants do not cite contractual language in the agreement of the parties from which it may be held that the machinists, and they only, had the right to perform the work, to the exclusion of outside persons. * * *"

proves this is a conclusion not supported by the facts, as the employes did cite clear and unambiguous agreement terms. Rule 42, which states in pertinent part—

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, * * *."

Rule 49, captioned "Classification of Work, Machinists" defines pump and injector work as machinists work. Therefore, the majority is in error in its findings upon which this award is made and we are forced to dissent.

C. E. Bagwell

E. J. McDermott

T. E. Losey

Robert E. Stenzinger

James B. Zink