

Award No. 4522
Docket No. 4467
2-L&N-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Louisville & Nashville Railroad Company, hereinafter referred to as the Carrier, violated Rule 30 of the current agreement, when it contracted to an outside concern, work that properly belonged to the machinists' craft at South Louisville Shops.

2. That the Carrier be ordered to pay \$700.00 to be divided by the machinists on the Tool Room overtime board and \$400.00 to be divided between the machinist welders on the welders overtime board.

EMPLOYES' STATEMENT OF FACTS: At the carrier's main repair shops, South Louisville, Kentucky, the machinists and machinists welders are carried on a common seniority roster. The January 1, 1962 roster shows 423 machinists. This roster further shows that machinist rank 356 through 423 to be furloughed.

This repair shop is fully equipped with machinery and skilled manpower capable of performing this work in an outstanding mechanical manner and the carrier has utilized the shop facilities and manpower to perform this work during many years prior to this occurrence.

A few days prior to January 17, 1962, the machinists at South Louisville removed one 20" gear, three 6½" gears, three 4½" gears, one 9" gear and one 9" x 12" gear from machinery in the Power House during a repair operation. These gears, along with one air motor and two rivet gun sleeves, were sent to the F. Churon Company, Evansville, Indiana, for repairs. On January 17, 1962, these items were returned to South Louisville Shops in a reworked condition. The carrier paid the Churon Company \$1,100.00 for these repairs.

This dispute has been handled in accordance with the agreement, with all officers of the carrier designated to handle disputes, including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustments.

In Third Division Award No. 6492, Referee Whiting, it was held:

" . . . under the rules set forth in Awards No. 5304 and 5563 and based on the evidence here presented, the work here involved must be considered as unusual or novel and not contemplated by the scope of the agreement between the parties.

In light of the whole record, carrier submits that the current agreement has not been violated and that the principles of the above-referred to Awards of the National Railroad Adjustment Board fully support carrier's actions in this case and respectfully requests that the claim 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 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 were given due notice of hearing thereon.

The Division finds that the record in question is uncontroverted that the specific items in question—five gears, a side motor, and two rivet gun sleeves—that when they were worn out they were always consigned to the scrap pile by the Carrier who never attempted to rework or reclaim them but rather replaced them with new parts.

It is also undisputed in this record that the Carrier has the unilateral right to make the decision as to whether worn out equipment or parts thereof, should be reworked, reclaimed or scrapped.

Since the record shows that the specific parts in question when worn out were always scrapped rather than reworked or reclaimed, the Division finds it difficult to follow the Claimants' contention that they were denied or had lost the opportunity to do work to which they were contractually entitled. This conclusion is not negated by the admitted fact that the Carrier sometimes reworked or reclaimed in its machine shop larger gears and other types of equipment and parts.

Furthermore, since the record is clear that the Carrier had never reworked or reclaimed the specific items in question and had always replaced them with new parts, the Carrier's contention that it did not possess the means for reclaiming these worn out parts must stand, in the absence of clear evidence to the contrary. It also follows that the Carrier's attempt to find an experimental method for successfully reclaiming parts heretofore always scrapped, cannot be held to be an attempted evasion of the Claimants contractual right to perform work on the specific items in question.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1964.