

Award No. 1556
Docket No. 1455
2-NC&StL-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 83, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly contracted to the International Harvester Company the maintenance work on an Industrial Shop Tractor Crane on or about October 12, 1950.

2. That accordingly the carrier be ordered to desist from contracting out this work and compensate Machinists R. O. Campbell, Robert O'Leary and W. T. Hibbett, each, in the amount of eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Prior to and after an agreement was entered into with System Federation No. 83, this carrier maintained a shop known as the motor car shop at Nashville, Tennessee, which shop has the necessary facilities to maintain cranes of all types including Industrial shop tractor cranes, where the work of maintaining these cranes was always performed by machinists. On or about October 12, 1950, the carrier contracted the work of overhauling the engine of an Industrial shop tractor crane to the International Harvester Company. This Industrial shop tractor performs work in and around the shops at Nashville, consisting of transferring parts or materials from the store room to the jobs where the mechanics perform the work required on mechanical department equipment. Also, it lifts wheels and places them on the tracks for the mechanics to apply, returns the old or worn wheels to a place in the shop where machinists perform the required work on them.

This case was handled with carrier officers from bottom to top, designated to handle such matters, who all declined to adjust this dispute.

The agreement as revised September 1, 1949, is controlling.

POSITION OF EMPLOYEES: It is submitted that the work involved in the instant dispute is included in Rule 58, in pertinent part reading:

"Machinists' work shall consist of . . . maintaining . . . cranes. . . ."

In view of the long accepted understanding between the parties, carrier asserts the instant claim should be denied. See Second Division Award No. 1088.

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 arises out of the fact that in October, 1950, carrier had a McCormick-Deering tractor, equipped with a hoist, repaired by the International Harvester Company. It is fundamental that work covered by a contract with employes cannot be contracted out to others. That principle is the foundation upon which collective bargaining agreement rights rest.

Rule 58 of the parties agreement provides:

"Machinists' work shall consist of . . . maintaining, . . . cranes, hoists, . . ."

Normally this language would cover the work of maintaining this equipment, which we will herein refer to as a crane. This would be particularly true in view of the fact that carrier maintains a motor car shop at Nashville, Tennessee with facilities sufficient to maintain cranes of the type here involved.

But the scope of the language of Rule 58 is qualified by the preamble to the parties' controlling agreement, which provides:

"It is understood that this agreement shall only apply to those . . . Employes who perform the work specified in this agreement in the Maintenance of Equipment Department, plus that which under present practices of the Railway is being done by employes of the Department."

By this language carrier gave to the employes covered by this agreement the right to perform all the work of the class covered thereby which is performed in the Maintenance of Equipment Department plus whatever work of the class performed by these employes which, under then practices, the other departments of the carrier assigned to them. But it did not require that work of the class covered by their agreement, which any other department might have, had to be so assigned. In fact, it preserves the then practices on the carrier relating thereto but in no way extends them.

The record shows that in the past the work of repairing such equipment assigned to departments other than the Maintenance of Equipment Department has been performed by machinists, or other employes in the Maintenance of Equipment Department, when such equipment is turned over to the Maintenance of Equipment Department for repairs by such other department. In other words, the employes of the Maintenance of Equipment Department have not had the exclusive right thereto. This practice the Preamble to the controlling agreement preserves but does not expand.

The record establishes that the equipment involved was assigned to the Stores Department, manned by Stores Department employes and used exclusively to perform work of that department. It was not used as a tool or to perform work in the Maintenance of Equipment Department. In view

thereof the employes of the Maintenance of Equipment Department had no right to the work of repairing it until the Stores Department requested them to perform it. This it did not do.

Whether or not carrier had a right to contract the work to outsiders we need not and do not decide. All we decide is that until the Maintenance of Equipment Department was requested to do the work the machinists of that department had no right thereto.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July, 1952.