

Award No. 1777

Docket No. 1663

2-MP-MA-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under provisions of current agreement the Carrier did improperly contract to the Electro-Motive Company or other outside contractors, the re-lubricizing of Diesel engine pistons.

(2) That accordingly Carrier be directed to discontinue contracting this work to Electro-Motive Company or other outside contractors.

EMPLOYES' STATEMENT OF FACTS: At Osawatomie, Kansas, as well as other shop points on the Missouri Pacific, the carrier employs sufficient skilled mechanics necessary to properly rebuild, repair, maintain and service diesel locomotives and parts thereof. These mechanics are fully qualified to perform any and all work required in the building, maintaining and servicing diesel engines.

Regardless of this fact the carrier persistently and with complete disregard of rules of controlling agreement, contracted to the Electro-Motive Company or other outside contractors, the re-lubricizing of diesel engine pistons. All efforts on the part of employees' representatives in conference and by correspondence with the carrier's representatives in an effort to compose this dispute have been productive of no satisfactory results.

POSITION OF EMPLOYES: It is submitted that the work involved in the herein instant dispute is included in Machinists' Classification of Work Rule 52(a), pertinent section herein quoted:

"Machinists' work, including regular and helper apprentices, shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling and installing machinery, locomotives and engines (operated by steam or other power) and all other work generally recognized as machinists' work".

It must be conceded that the afore-quoted portion of Rule 52(a) contracts to the mechanical craft repairs herein described on diesel locomotives (re-

the diesel-electric locomotive had not yet arrived on Missouri Pacific rails, nor scarcely on any other railroad, and that the work involved in lubrizing diesel engine pistons could not have been specified within the cover of the agreement effective November 1, 1934. A careful search of subsequent agreements will fail to reveal any mention, in any of the Classification of Work Rules, of the lubrizing of diesel engine pistons, and the machinists' organization has never been requested the carrier to write the lubrizing of pistons into the machinists' Classification of Work Rule.

It is conclusive, therefore, that the lubrizing of diesel engine pistons, involving, as has been shown, the chemical manipulations necessary to the process, cannot be regarded as work of the machinists' craft. When this is considered in the light of the fact that it is a process but recently perfected by the chemists and nowhere mentioned in any of the Classifications of Work Rules applicable to the machinists' craft, we believe it must be agreed it cannot constitute work recognized as that of the machinists' craft.

In conclusion, the carrier urges your Board to deny the request of the petitioner for the following reasons:

1. There is no contract right to the work involved.
2. The carrier retains the inherent right to have work performed at other than carrier's maintenance of equipment department.
3. The request is contrary to long years of practice under the current as well as preceding shop crafts' agreements.
4. The carrier is not equipped to lubrize diesel engine pistons in its shops.
5. The carrier does not have the skilled personnel required.
6. The lubrizing of diesel engine pistons is not, in any event, work contracted to or recognized as that 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 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 involves carrier's contracting with the Electro-Motive Division of General Motors Corporation for the re-lubrizing of diesel engine pistons. The machinists of System Federation No. 2 claim this is in violation of Rule 52(a) of their agreement with the carrier.

It is well established that a carrier may not let out to others by contract the performance of work of a type which is embraced within its collective agreement with a certain class of employes. But carrier contends there is nothing in the language of its contract with these employes that gives them any right to work not performed in its Maintenance of Equipment Department and that it retains the inherent right to determine what work it will have performed there. It is true that carrier has the inherent right, except as it has limited or restricted itself by the terms of its agreements, to operate its business in a manner it thinks best and this would include the right to determine where it would have its repair work done.

The preamble of the parties' agreement provides:

"It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department."

This language provides that the several scope rules of the agreement cover all work within the language thereof when performed in the Maintenance of Equipment Department by the classes of employees included therein. It may be true, and probably is, that the agreement does not cover the performance of the work specified in the various scope rules of the agreement when it has been customary for carrier to have it performed by employees in its other departments, a question not before us, but the language does not permit carrier to contract such work to others outside of its employment. The question then is, is it covered by the machinists' classification of work rule?

This rule, 52(a), insofar as here material, provides:

"Machinists' work, including regular and helper apprentices, shall consist of * * * fitting, adjusting, shaping, * * * of metals used in * * * maintaining, * * * locomotives and engines (operated by steam or other power), * * * and all other work generally recognized as machinists' work.

It will be observed that the language is broad enough to cover the work specified in relation to diesel power.

The cast iron pistons used in diesel engines are originally lubrized to prevent them from shedding lubrication too quickly and thus insure proper lubrication from the instant the engine starts and thus reduce wear during the period it is being warmed up or is being broken in. We think the work of re-lubrizing these pistons to put them in serviceable condition, after they have been used and become worn, is a repair operation coming within the machinists' scope rule as it relates to maintaining diesel locomotives and engines. That this is fully recognized by carrier is evidenced by the fact that it has employees of the machinist craft perform all of the work in connection therewith except the processing itself.

There are recognized exceptions to the general rule hereinbefore stated. One is when the carrier does not have equipment necessary to perform the work and it is so expensive that the work to be performed would not justify its purchase. That is not the situation here. Another may be said to exist when it appears the work to be performed requires special skills which the employees involved do not ordinarily possess. That is the situation here. While the physical operations performed in the processing of these pistons to re-lubrizize them are not beyond the capabilities of machinists we do find the work of keeping the chemical solutions used in connection therewith in proper condition to require the attention of personnel with technical knowledge of the chemical processes involved. This is not ordinarily within the qualifications of machinists. For the reasons herein stated we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary.

Dated at Chicago, Illinois, this 28th day of May, 1954.

DISSENT OF THE LABOR MEMBERS TO AWARD NO. 1777.

We are compelled to dissent to Award No. 1777 for the following reasons:

The majority correctly found that the language of the current agreement did not permit the contracting out of work, and we quote from the findings:

"* * * the language does not permit carrier to contract such work to others outside of its employment."

Further they correctly found that the re-lubrizing of pistons was machinists' work in under the current agreement and we quote from the finding:

"* * * the work of re-lubrizing these pistons to put them in serviceable condition, after they have been used and become worn, is a repair operation coming within the machinists' scope rule as it relates to maintaining diesel locomotives and engines."

Therefore the award is erroneous.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

George Wright