Award No. 1808
Docket No. 1684
2-AT&SF-MA-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—(Coast Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than Machinists were improperly used to repair Ford V-8 Station Wagon, License No. N-58713, on or about March 20, 1952.

2. That accordingly the Carrier be ordered to additionally compensate Machinists C. R. Grant and M. L. Starr each in the amount of twenty-four (24) hours' pay at the applicable rate.

EMPLOYES' STATEMENT OF FACTS: At the San Bernardino shops the carrier maintains a complete and well equipped automobile and truck repair department. This repair department is equipped to perform engine exchanges and rear end overhaul. Station Wagon Ford V-8, License No. N-58713, was placed in the San Bernardino shops for repairs on March 18 and 19, 1952, but no one was assigned to work on it. It was moved from the shop on the evening of March 19, 1952 without any work being performed. It was again placed in the San Bernardino shops on March 27, 1952 for painting and rewiring, which work was performed. While it was being painted and rewired it was noted that the work of overhauling the rear end and exchanging engine had been performed elsewhere since the time it was placed in the San Bernardino shops on March 18 and 19, 1952. An investigation developed that repairs involved in this dispute had been made by the Garner-Muth Company of San Bernardino, California. Machinists C. R. Grant and M. L. Starr, hereinafter referred to as the claimants, are regularly employed as such in the motor car shops, doing work similar in nature to that in question, were available to perform the work in dispute. The claimants are assigned to the 7:00 A. M.—12:00 Noon, 12:30 P. M. to 3:30 P. M. shift, Monday through Friday, with rest days of Saturday and Sunday.

The carrier has declined to settle this dispute on an acceptable basis to the employes.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

Various awards of this and other Divisions of the Board are to the effect that where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself.

In its Award 1083, Second Division of this Board stated:

"It is the contention of the employes that Rule 29 was violated. Carrier contends that the practice complained of is not in conflict with Rule 29. The same has been the accepted understanding for better than twenty years.

This is a case in which the rule could be interpreted either way. Parties to the agreement have interpreted it for twenty years and in view of the long accepted understanding by the parties the claim cannot be sustained. See Award 974, Second Division.

AWARD

Claim denied."

Also, in its Award 1088, Second Division, the Board stated:

"This case was submitted on a joint statement of facts. It is the contention of the employes that the carrier violated Rule 160 of the shop crafts' agreement by requiring the car inspector at Ingalton to make a record of seals. The procedure followed at Ingalton has been the same for sixteen years.

Repeated violation of a rule does not change it, but where there is doubt as to what the rule means, the interpretation placed upon it by the employes and the carrier for a long period of time clearly shows the intent and understanding of the parties. For sixteen years the present practices at Ingalton has prevailed. In view of this long period of time in which there has been no complaint, this Board is of the opinion that the claim will have to be denied. See Award 974.

AWARD

Claim denied."

The following Awards relate to the issues herein involved and come to a like conclusion:

Second Division Awards 974 and 1153.

Third Division Awards 900, 1246, 1257, 1435 and 2436.

Since it is clear from the facts and circumstances in the case that the claim is without merit or support of the agreement, it should be declined.

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.

On or about March 20, 1952, carrier contracted the work of overhauling a Ford V-8 Station Wagon to the Garner-Muth Company of San Bernardino,

California. Carrier maintains a well equipped and complete automobile and truck repair department at this point. The overhaul required an engine exchange and rear end transmission repairs. Claimants (machinists) claim the work.

It is the contention of the organization that Rule 52, current agreement (classification of work rule) controls. The rule states:

> "Machinist's work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring, engine inspecting, air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work."

The foregoing rule describes specifically the work within its scope. It will be noted that the repair of trucks and automobiles is not specifically mentioned in this rule unless it is included in "all other work generally recognized as machinists' work." The carrier contends that during the negotiation of the current agreement effective August 1, 1945, no discussion was had concerning the repair of automobiles and trucks although the organization knew how such work was being handled.

The carrier states that the number of automobiles and trucks used have progressively increased over the years. There is a variety of types and makes used which are assigned to the operating, engineering, maintenance of way, stores and other departments of the carrier. Throughout the past, mechanical work on such equipment has been performed partly by carrier employes and partly by garages and other outside concerns. The carrier does not stock repairs for these vehicles except as to small items common to all. Carrier asserts that for more than thirty years this practice has existed without complaint by the employes until the present dispute arose. It is not work generally recognized as machinists' work exclusively on this carrier.

The organization cites Section 27, Appendix "B" to the agreement effective August 1, 1945, which states:

> "The parties recognize the past practice on this railroad and in the industry and agree that the Management may contract with other persons, firms, or corporations for unusual or intricate jobs connected with the repair or reconstruction of its motive power and rolling stock. Minor installations or repair jobs, such as electric wiring, plumbing, etc. on building or other facilities at points where Mechanical Department forces are not employed, may continue to be contracted to local persons, firms, or corporations."

We fail to see how Section 27 is helpful in resolving the present dispute. It recognizes past practice in contracting construction and repair to its motive power and rolling stock only. It likewise permits the contracting of minor repair work at points where mechanical forces are not employed. It contains nothing helpful as to the overhauling and repair of motor vehicles.

The automobile here involved was assigned to the operating department. We find nothing in the agreement with the Machinists which gives them exclusive right to maintenance work in connection with the vehicular equip-

ment of other departments. It is true that mechanical department employes have performed some of this work but it does not appear that any practice existed under which they performed it exclusively. The record shows the practice to be to the contrary,—part has been performed by them and part farmed out for more than thirty years. Under such circumstances the mechanical forces are in no position to claim an exclusive right to perform the work. Awards 1110, 1556. Mechanical forces have the exclusive right only to the work embraced in their scope rule and other work exclusively performed by them under an established practice. The claim is not sustainable under either contingency.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July, 1954.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1808

The majority erred in making Award No. 1808 for the following reasons:

First, Rule 52, Classification of Work Rule, covers the work in question—the rule reads in part:

> "Machinists work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing * * * engines (operated by steam or other power) * * *."

Award No. 170 of this Division, without a referee, interpreted this language to mean that it covered the maintenance of gas engines or gasoline motors that were involved in that dispute—and, again in Award No. 726 of this Division, with the assistance of a referee, this same question of maintenance of gas engines being machinists' work, was upheld.

Second, the majority admit Section 27, Appendix "B" of the current agreement would apply except at points where no mechanical forces are employed and they also admit that at San Bernardino, California, where this dispute originated, the carrier maintains a well equipped and complete automobile and truck repair department with competent mechanics employed therein to perform the work. The Board should have held that Section 27, Appendix "B" applied in this case and the claim should have been sustained.

Charles E. Goodlin
R. W. Blake
T. E. Losey
Edward W. Wiesner
George Wright