Award No. 1865

Docket No. 1743

2-CRI&P-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Machinsts)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the repairing and testing of Alco diesel engine fuel injection pumps is Machinists' work within the meaning and the application of the current agreement.

2. That about December 13, 1952, the Carrier violated the aforementioned current agreement when the election was made to assign the work of repairing and testing these Alco diesel engine fuel injection pumps to a Chicago Company which thereby damaged its employes of the Machinists' craft.

3. That accordingly the Carrier be ordered to compensate damaged Machinists Charles B. Jones, Elving C. Johnson, Arthur E. Wells and Earl R. Zierke in the amount of hours equal to those the Chicago Company paid to its employes for the performance of the work specified in above items 1 and 2, with a minimum of not less than 16 hours, to each of these employes at their appropriate applicable rates of pay.

EMPLOYES' STATEMENT OF FACTS: At Silvis, Illinois, the carrier maintains its largest diesel locomotive shop, which is fully equipped to make any and all repairs to diesel locomotive engines, including the component parts thereof. This shop consists of the general erecting floor, an overhauling department for diesel engines and appurtenances such as governors, compressors, heads, liners, and all other parts which are completely dismantled, repaired and reassembled.

However, Machinists Charles B. Jones, Elving C. Johnson, Earl R. Zierke and Arthur E. Wells, hereinafter referred to as the claimants, were regularly employed in the diesel shop on the second shift from 3:30 P. M. to 11:30 P. M. and that they were available to supplement the force assigned to the fuel pump in injector room on the first shift to overhaul those Alco fuel injection pumps.

Notwithstanding the aforementioned Diesel Shop and shop facilities, the carrier made the election on or about December 13, 1952, a few days before Christmas, to do these things, namely:

2. The memorandum of agreement, a part of the master agreement, does not support the organization's position. **It supports the carrier's position.**

3. The word "necessary" is unrestricted and unmodified in the memorandum of agreement. **It may not legally be restricted in interpretation.**

4. Both the material and service received without charge by the carrier and the lesser per unit cost made it necessary that these diesel fuel injection pumps be sent to the Illinois Auto Electric Company.

5. Practice on the property before and during negotiation and after the effective date of the agreement does not support the organization's case. **Practice supports the carrier's position.**

6. The employes did not perform this work when it originated on the property and did not perform the work for a period of more than ten years. When they did begin to perform the work, they only performed a part of it. At no time have they performed all the disputed work.

7. Granting these employes a monopoly on the work in question would materially increase the carrier's cost of operation. **That would be contrary to the law.**

8. The employes were not performing the work in question prior to and on the date of and for a period of more than three years following the effective date of the agreement. They are performing more of this type work now than they did on the effective date of the agreement. **Still not satisfied they seek more. In seeking more they attempt to bypass negotiations.**

9. Officers of the organization knew the carrier's position during negotiations leading up to the memorandum of understanding. It was re-explained to them by one of carrier's officers in 1949. (See carrier's exhibits B, C, D and E). **Through your Board's action the organization is striving to gain something they could not get through the legitimate channels of negotiations.**

We resubmit again our petition for the reasons previously assigned that you dismiss the claim. Should you hold otherwise and decide the case on its merits we respectfully petition on the basis of the evidence we have presented that the claim be denied in its entirety. None of the claimants involved lost any earnings from their regular assignment, hence they have not been injured in any respect.

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 December 12 or 13, 1952 carrier sent twenty-five Alco diesel fuel injection pumps to the Illinois Auto Electric Company. These pumps were returned to carrier on or about December 15, 1952. Said pumps were manufactured by the American Bosch Corporation, for whom Illinois Auto is an authorized service agency. The latter firm modified the pumps to the latest Bosch specifications, replacing the delivery valve holders at no cost to the carrier, and calibrated the reassembled units. Organization contends the sending out of such work was in violation of its scope rule (Machinists Classification of Work Rule 53), that said work should have been performed at carrier's Silvis, Illinois, shops, which assertedly are fully equipped to perform such work, and that in consequence certain designated machinists should be compensated as stated in the claim.

Claimants were regularly employed on the second shift during the first three weeks of December 1952 but by notice issued December 17 they were placed on layoff effective as of close of second shift on December 24. Organization contends claimants were available to supplement the force assigned to the fuel pump and injector room on the first shift to overhaul the pumps sent to Illinois Auto.

Carrier acquired its first Alco diesel using this type of pump in 1940 but its own employes did not begin performing this type of work until 1951, by which time carrier had installed necessary repair and testing equipment in its Silvis shops. Prior thereto, carrier sent out all such work to be performed by other firms. Illinois Auto has been repairing, rebuilding, etc. some of carrier's pumps of this type during each year beginning 1945.

Considered alone, it appears that Rule 53 grants jurisdiction over regular repair of such pumps to the machinist craft. The Division has held in other cases, however, that when a carrier is not equipped to perform work falling within the contractual jurisdiction of its employes, and where it cannot reasonably be expected to obtain such equipment in view of the amount of work to be performed, such work may properly be contracted out. We have seen that prior to 1951 machinists employed by the carrier did not perform such work, carrier was not equipped for same, and there is no evidence of record that prior to the subject claim petitioning organization grieved concerning the sending out of this work.

In October 1948 the carrier and the several shop craft organizations signatory to the controlling agreement entered into a Memorandum of Understanding which set forth, among other matters, the purpose of the parties in revising and expanding the general scope rule set forth on the title page of said agreement. (Pertinent section quoted above, carrier's ex parte submission.) This Memorandum states in part that the change in said scope rule "* * * does not affect work which is performed by employes of other departments and now covered by agreements with other organizations, **nor change present practices as to handling of Maintenance of Equipment work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange."** (Emphasis supplied.)

Carrier contends this is a special provision which, to the extent it may appear to be in conflict with the machinists' scope rule, is nevertheless controlling; that said provision specifically authorized the continuance of carrier's then prevailing practice with respect to sending out the pumps in question; that the term "necessary" as used in the above-quoted clause means "prudent," "economically desirable," etc., rather than only "essential" or "indispensably necessary"; and that the term "factory" was intended to cover the various types of outside establishments to which the pumps have been sent since 1940. Organization responds the quoted clause refers only to sending units back to the original manufacturer where breach of warranty is involved.

We agree that the proper interpretation of the quoted clause in the 1948 Memorandum provides the key to the determination of this dispute. We find such clause to be clear and unambiguous. Nor do we find a conflict between this provision and any other clause of equal weight. Thus we cannot conclude that a practice different from that permitted by such clause can be permitted to control.

Said clause permits the continuance of those practices that were in effect in October 1948. But the words "present practices" do not stand alone. They are qualified by the succeeding clause "which may be necessary to send to the factory for repairs," etc. The latter clause cannot reasonably be interpreted to mean only the return of units where breach of warranty is involved. If such were the parties' intent it would have been much simpler to state precisely that. We should assume that by using much more detailed and more lengthy terminology the parties intended to cover a broader practice. But for the same reason, we cannot concur with carrier's position that

the Memorandum permits continuance of all October 1948 practices with respect to sending out such work. If the parties had so intended, they would not have added the qualifying clause last quoted.

We are unable to agree with the carrier's view that "factory" means any outside firm equipped to repair, rebuild, etc. the pumps in question. In its normal usage the term is not applied to purely service organizations that do not manufacture the product involved. Reference to "the factory" in the cited provision clearly relates to the original manufacturer. In the present case, Illinois Auto is an agent of American Bosch, however, and the carrier therefore sent the pumps to the factory for all practical purposes.

Was it "necessary" to send these pumps to the factory? In the present instance we think it was. As previously noted, under authorization from the manufacturer, Illinois Auto performed certain work without charge to the carrier for the purpose of bringing the pumps up to Bosch's latest specifications. This is not regular repair or rebuilding work, and even if carrier's employes could have performed this task, carrier could not reasonably have been required to refuse to avail itself of the manufacturer's service of this kind.

To summarize our findings in the subject case, carrier's action was proper because it represented a practice prevailing as of the execution of the above-noted Memorandum, the work was sent to the factory, and it was necessary to do so. The claim must therefore be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1955.