

Award No. 2250

Docket No. 2110

2-MP-MA-'56

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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreements were violated when the Carrier on April 13, 1954 assigned the repairing of brakes of Car Department automobile truck to local service station, which thereby damaged employes of the Machinist Craft, subject to the terms of said agreements.

2. That accordingly the Carrier for the aforesaid work performed by local service station be ordered to additionally compensate Machinist W. L. Bound and Machinist Helper V. C. Lewellyn in the amount of four (4) hours each at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains at Osawatomie, Kansas a large force of machinists and machinist helpers, who have for many years performed repairs on automobile truck used by car department. The car department truck is used at Osawatomie shop by the carmen and also used to make repairs on cars on line outside of Osawatomie shop. This equipment and these employes are covered by the September 1, 1949 agreement.

The carrier made the election to unilaterally assign the repairs to automobile truck to local service station on date of April 13, 1954.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted, on the basis of the foregoing statements of facts and the rules of the agreement applicable to them, that the carrier did damage the employes of the machinists' craft, as claimed. These employes were also damaged in violation of the carrier's contractual obligation to them and in support thereof, attention is called to provisions of these aforesaid agreements, which for ready reference follow:

"First: It is understood that this Agreement shall apply to

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 buildings 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 equipment 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."

This claim is without any support under the agreement and is contrary to more than 30 years of continuous practice on this property. For the reasons fully set forth in this submission, it must 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.

The parties to said dispute were given due notice of hearing thereon.

Carrier maintains a force of machinists and machinist helpers at Osawatomie, Kansas. The question here presented is whether employes under the Machinists' Agreement have the exclusive right to the repair of over-the-road trucks used by the car department to make repairs on cars on line outside of the shop area.

The result is controlled by Award 1808. The rule involved in that dispute was similar in its material aspects to the one here relied upon. Under the reasoning of Award 1808, the claim of the machinists' organization that the repair of over-the-road trucks used by the car department belongs exclusively to machinists cannot be sustained. See also Award 1110.

A further contention is urged in the present dispute. On March 10, 1953, a local agreement was entered into between the carrier and the machinists and electricians' committees with reference to the allocation of work between the two crafts at Osawatomie. This agreement did not purport to expand the scope of the Machinists' Agreement. Its purpose was to allocate the work being performed at this point between the two crafts, and nothing more. The matter of the repair of over-the-road trucks used by the car department was not a part of the work allocated by the agreement.

The organization contends that the machinists were entitled to perform the work exclusively by practice. The record does not show that such work was performed exclusively by machinists. The practice appears to be that part of this work has been performed by machinists and part farmed out for more than thirty (30) years. Under such circumstances the machinists have no exclusive right to the work and consequently no basis for an affirmative award.

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 September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2250

We are constrained to dissent for the following reasons:

First: The majority rely on Award 1808 to support their position in this award. The facts of record in the dispute which resulted in that award are not in point; it was on another railroad with different agreement rules and facts in the record. Furthermore, said award in itself is erroneous. See dissent to said award.

Second: Rule 52 (a), captioned "Machinists Classification of Work," reads in part:

"Machinists' work, including regular and helper apprentices, shall consist of laying out, fitting, adjusting * * * and all other work generally recognized as machinists' work . . ." (Emphasis ours.)

Third: The memorandum of understanding agreed to between the parties (the carrier, electrical workers and machinists) to the governing agreement, said understanding being dated March 10, 1953, reads in part as follows:

"The Machinist Craft relinquished their claim on all electrical work on shop tractors, floor cranes, trucks * * *. Mechanical work on this equipment will be maintained by the Machinists." (Emphasis ours.)

Fourth: The repairing of the brakes on this truck is work covered by Rule 52 (a) of the governing agreement and the memoran-

dum of understanding dated March 10, 1953 and is machinists' work. Therefore Award 2250 is erroneous.

George Wright

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner