

Award No. 3185

Docket No. 2978

2-MKT-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYEES:

1. That the building, assembling, dismantling and repairing of diesel engines is machinist's work under the current agreement.

2. That on or about March 3, 20, 1957 and April 2, 1957, the Carrier removed and shipped from its Parsons, Kansas Shop four 16 cylinder 567 (B) Diesel Engines, serial numbers 7398-7330-6200 and 6087, to the Electro-Motive Division at LaGrange, Illinois for overhaul and repair.

3. That, accordingly, as a penalty for the aforementioned violation, the Carrier be ordered to compensate Machinists L. W. Clarke, J. M. Parks, R. P. Rotche, F. E. Wilkie, E. A. Journot, W. N. Cook, R. O. Jones, A. L. Haedman, W. M. Munding, C. R. Francisco, E. C. Galvin, J. J. Karry, E. J. Breshon, G. T. Mallinax, W. L. Treodway, O. A. Hughes, W. E. Towles, J. A. Gudde, W. M. Rhodes, L. O. Head, F. W. Bosore, A. J. Denton, E. A. Gentry, C. E. Lacy, W. F. Talbott, R. W. Parks, G. E. Stringer, R. G. Foreman, C. L. Weidert, W. B. Baker, R. F. Good, T. J. Helmkampt, P. R. Qualls and E. H. Thomas an equal number of hours each at their pro-rata rate to correspond with the number of hours of labor charged to the Carrier by the Electro-Motive Division of the General Motors Corporation for the repairs to these diesel engines. And, that an additional amount of compensation be allowed to each of the above claimants for each subsequent similar violation.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim, and grant said railroad companies, and each of them, such other relief to which they may be entitled.

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.

Parties to said dispute were given due notice of hearing thereon.

It appears that the carrier purchased some factory rebuilt and warranted diesel engines, which incorporated improvements made by the manufacturer. The old B type engines were removed from the locomotives and these new BC type engines were installed. The old engines were then shipped to the manufacturer for scrap credit.

No repair work was performed on such old engines by or on behalf of the carrier. Instead, it elected not to repair some obsolete and unserviceable equipment but to scrap it and purchase factory warranted replacements, as was the case in our Award No. 3184 (Docket No. 2840). Here likewise there is no provision of the agreement which requires the carrier to repair any particular equipment nor which restricts its right to discard and replace unserviceable equipment instead of repairing it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3185.

Contrary to the findings of the majority in Award No. 3185, the record shows that work subject of this dispute has been regularly performed by machinists, subject to the agreement between this carrier and System Federation No. 8, and is controlling.

In an effort to justify their erroneous award they make the unsupported statement—

that the carrier has the right to trade in used or worn equipment as part of the purchase price of rebuilt or new equipment.

Examination of the aforesaid controlling agreement discloses no exceptions expressed or implied.

The repairing and rebuilding of equipment of this type is work which belongs to the machinists in under their agreement—specifically see Rule 45 of said agreement.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink