Award No. 3228
Docket No. 3063
2-CRI&P-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the building, assembling, dismantling and repairing of diesel engines is Machinists' work under the current Agreement.

2. On or about June 14, 1954, the Carrier sent to the Electro-Motive Division of General Motors Corporation one sixteen cylinder, Model 267-B diesel engine, Serial Number 7090 to be overhauled and repaired.

3. That, accordingly, the Carrier be ordered to compensate Machinists Walter G. Budd and A. E. Wells an equal number of hours pay at the time and one-half rate to correspond with the number of hours of labor charged to the Carrier by the Electro-Motive Division of General Motors Corporation for the overhauling of this engine.

EMPLOYES' STATEMENT OF FACTS: This carrier maintains at Silvis, Illinois its largest diesel locomotive repair shop, which is fully equipped to make any and all repairs to diesel locomotives and diesel engines, including the component parts thereof. This shop consists of a general erecting floor and overhaul department for diesel engines and appurtenances, such as compressors, governors, fuel pumps, injectors, cylinder heads and all other parts which are completely dismantled, repaired and assembled, in addition to a running repair department.

Machinists are regularly assigned at Silvis Shop to completely overhaul all types of diesel engines, including the 16 cylinder, E.M.D. engine

We submit that this case is similar to that found in your Board's Award 2377.

We submit also, without relinquishing our position as above, that the claimants involved were fully employed and, of course, can show no loss of earnings or injury in connection with this case, but assuming their claim has merit, which, of course, we deny, it is a well-established principle of this and other Divisions of the Adjustment Board, that if penalty is to be assessed by this Board—and there is no rule in the employes' agreement providing for such—it can only be at pro-rata rate.

On basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employes' agreement.

We respectfully request your Board to deny this claim.

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.

This docket is the lead case, accompanied by five others wherein claims are advanced by the organization against this carrier, all growing out of similar facts.

In general, the facts are not disputed. The carrier acquired a number of diesel engines which had been re-worked by the manufacturer, with some refinements added, and which were accompanied by the manufacturer's warranty. In payment therefore, the carrier turned in some old engines to the manufacturer, with the allowance to be granted, to be figured later, after manufacturer had re-worked them.

The captioned parties to this dispute have entered into a "memorandum of Understanding" which reads "* * * this agreement * * * shall apply to those who perform the work specified in this agreement", and the purpose of the agreement change was "to prohibit the carrier from hereafter unilaterally assigning the work * * * to other than employes * * *. This * * * does not * * * change present practices as to handling of * * * work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange".

The question of when contracting-out work violates the agreement has been tested on this property before the present case in the following awards:

Award No. 1865 denied a claim involving fuel pumps on the ground that it was "necessary" to return them to the original manufacturer's service representative to be re-worked at no cost to the carrier. It was a finding of that award that the clause "necessary to send to the factory for repairs * * * cannot reasonably be interpreted to mean only the return of units where breach of warranty is involved."

In Award No. 1866, the same referee sustained a claim where this carrier sent some pumps, which were parts of diesel locomotives, to be repaired by a concern outside, (not the original manufacturer) and returned to the property. It was also found that such action was not "necessary".

In Award No. 2841, we sustained a claim wherein two air compressors, identified by their serial numbers, were sent from the property to an outside company for overhauling and return (citing Award No. 1866).

That award was distinguished in our Award No. 3158 (MKT-MA) wherein we denied a claim in a case in which old fuel injectors were sold as scrap to a manufacturer and their price was allowed as part payment on the purchase of a like number of remanufactured and warranted units. Our reasoning there was to the effect that a claim for repairs to the old units was not valid because they belonged to the manufacturer and their identity had been lost to view.

We conclude that our present case is most nearly similar to the facts shown in Award 3158. Here the diesel engines were exchanged and they became the property of manufacturer. This subsequent use is not shown and in particular there is no showing that they were returned to this carrier. The units we sent to the manufacturer became the property of the manufacturer and the work of repairing them, when and if they were repaired, was not work of this carrier.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3228, 3229, 3230, 3231, 3232, 3233 AND 3269.

In the findings of the majority in Award No. 3228 they recognize that machinists' work was performed on these Diesel Engines.

The Machinists' Classification of Work Rule No. 53 of the current agreement reads in part as follows:

> "Machinists work shall consist of * * * building, assembling, maintaining, dismantling and installing locomotives and **engines** (operated by steam or other power.) * * *." (Emphasis ours.)

The work of dismantling, rebuilding and assembling of Diesel engines comes within and is subject to the provisions of the above rule and has been performed by this carrier's machinists—See Awards Nos. 1866 and 2841 of this Division. Further, under the date of August 4, 1948, the scope rule of the current agreement was changed to prevent the assignment of work to other than employes covered by this agreement and reads in part as follows:

"It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Departments and in other departments of this railroad * * * **is to prohibit the carrier from hereafter unilaterally assigning the work specified in this agreement to other than employes covered by this** agreement. * * *." Emphasis ours.)

When the carrier assigned this machinists' work to other than employes covered by this agreement they violated said agreement.

Therefor the majority's award is in error and we are constrained to dissent.

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink

Edward W. Wiesner