

Award No. 3269

Docket No. 3119

2-CRI&P-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when the 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. That on February 3, 1955 the Carrier transferred the overhauling and repairs of one 12 cylinder Alco Diesel engine, Serial No. 11473, removed from locomotive 461 from its shops at Silvis, Illinois, to the American Locomotive Company.

3. That accordingly as a penalty for the aforementioned violation, the Carrier be ordered to compensate machinists Arthur Rhodenbaugh and Francis Huot an equal number of hours at the time and one-half rate, to correspond with the number of hours of labor charged to the Carrier by the American Locomotive Company for the overhauling and repairing of this diesel 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 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 reassembled, in addition to a running repair department.

Machinists are regularly assigned at Silvis shop to completely overhaul all types of diesel engines, including the Alco engine referred to in this claim, and such rebuilding and overhauling is performed daily at this shop.

dustry, it should be considered as a proper exercise of managerial judgment. (See Award 2377 of your Board). In the instant case, it was the carrier's judgment that the proper and sensible thing to do was to take advantage of the engine exchange service offered by the manufacturer and secure from them a complete, modernized, upgraded, and warranted engine rather than attempt to repair or rebuild worn and antiquated 244-B engines in kind which would not give us the advantage of a remanufactured, modernized, converted and warranted engine. The practice of trading used or worn-out or obsolete equipment as part of the purchase price of remanufactured, rebuilt or new equipment is not new, in fact, it is the usual custom.

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted engines received on unit exchange purchase orders for older engines, bear more resemblance to the purchase of new engines than to the maintenance and rebuilding of old engines.

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 employees' 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 employees' 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.

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

Insofar as the record discloses the transaction here involved was the purchase by the carrier from the American Locomotive Company of a remanufactured or rebuilt Model 244-G diesel engine. As part payment of the purchase price the carrier turned in the Alco Model 244-B engine.

The carrier took title to the Model 244-G engine, with warranty, and Alco took title to the 244-B engine, which is no longer built and which the carrier claims was obsolete.

The organization asserts that the transaction involved was nothing more than "an overhaul" job.

The carrier made no repairs on the 244-B engine, neither did Alco, insofar as the Statements of Facts show, nor does it appear that prospective repairs on the 244-B engine were considered.

Rules 28 and 53 of the current agreement are invoked by employees.

Unless the transaction was a subterfuge by which the carrier turned over the 244-B engine to Alco to repair for the carrier neither rule was breached.

The facts developed do not establish that such was the purpose or effect of the transaction.

Similar claims have been resolved against the organization in Awards Nos. 3158, 3159, 3184 and 3185 of this Division.

Claimant cites Awards Nos. 924, 1042, 1269, 1439, 1559, 1803, 1866, 1943, 1945, 2276, 2841, 2956 and 3177, Second Division.

In all of these awards, unlike the instant submission, the work involved was done on property owned by the carrier and on its behalf.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th 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 employees 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 Department and in other departments of this rail-

railroad * * * is to prohibit the carrier from hereafter unilaterally assigning the work specified in this agreement to other than employees covered by this agreement. * * *." (Emphasis ours.)

When the carrier assigned this machinists' work to other than employees 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