

Award No. 3387

Docket No. 3111

2-CofG-MA-'60

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. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the carrier improperly contracted one (Thew-Lorraine) Model 41 dragline out to Yancey Brother Tractor Company, Atlanta, Georgia, for general repairs during the month of February, 1957.

2. That accordingly the carrier be ordered to pay Machinists J. J. Connor, T. M. Preston and C. L. Simpson, \$2,647.25, to be equally divided among them account this violation of —rule 52— of the Current Shop Crafts Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, contracted with the Yancey Brothers Tractor Company, Atlanta, Georgia, to give one Thew-Lorraine, Model 41 drag line general repairs, which work was performed during the month of February, 1957, at a total cost of \$2,915.70, with work coming under the machinist classification of work —rule 52— amounting to \$2,645.88, the amount of this claim. Machinists J. J. Connor, T. W. Preston, and C. L. Simpson, hereinafter referred to as the claimants, held seniority as machinists with the carrier at Macon, Georgia, were furloughed at the time involved in this claim and were available for and experienced at this type of work.

This dispute has been handled on up to and with the highest designated officer of the carrier who has declined to adjust it.

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

POSITION OF EMPLOYEES: It is the position of the employes that the carrier is without authority to contract work out to an outside concern that is specifically covered in machinists classification of work rule 52 as follows:

“Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. See Awards Nos. 507, 1257 and 1397.”

The claim is for a new rule.

Carrier urges that the Board does not possess the authority to write rules, and the Board has consistently so held. The Board's holdings are based on the Railway Labor Act which clearly restricts the Board's authority to deciding

“ . . . disputes between an employe or groups of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . ”

See Section 3 First (i) of the Act.

The Board has heretofore held that such limitations have been placed upon it by law, and that it **does not** have authority to write new rules. See **Third Division Awards Nos. 6828, 6007, 5864, 4439, 4435, 2491, and others.** Carrier prays therefor that a denial award is clearly in order for this one reason, if for no other. Carrier so urges.

The **burden of proof rests squarely** upon the shoulders of the petitioners. See **Second Division Awards Nos. 2042, 1996, and others.** Also see **Third Division Awards Nos. 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 5418, 2676, and others.**

SUMMARY

Carrier has proven beyond any doubt that

1. There is no rule or rules to support the claim.
2. Past practice most assuredly does not support the employes' position. Performance of the work by contract as outlined in detail in carrier's Exhibit A was in keeping with accepted past practice as shown by probative evidence.
3. The claim is in fact a request that the Board grant the machinists a **new all-encompassing** rule. That under such facts in the past this Board has correctly held it is without authority to grant new rules, and
4. Since the claim clearly is **not** supported by the current contract on this property, the Board should not do other than render a denial award.

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.

The work in dispute consists of general overhaul or repairs to an off-track dragline operated by a mechanized gang composed of employes in carrier's Maintenance of Way and Structures Department. Agreement Rule 52, which sets forth a definition of machinists' work does not specify the work involved in this dispute. The record conclusively establishes that employes in the machinist craft covered by the subject Agreement have not traditionally performed all of the repair work to roadway equipment such as that involved in the instant case. A large portion of such work has been done by others, this practice having been in effect for many years. We must hold, therefore, that the agreement does not confer exclusive jurisdiction over the subject work to members of the machinist craft on this property.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1960.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3387, 3388, 3389 and 3390.

The majority ignores the clear and unambiguous terms of the controlling agreement—Machinists' Special Rule No. 52 reading as follows:

"Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing * * * engines (operated by steam or other power), cranes and machinery * * * and all other work generally recognized as machinists' work. (Emphasis our).

Awards of this Division, No. 170 without a referee and No. 726 with the assistance of a referee has held this language to mean that maintaining of gas engines is machinists' work.

Maintenance of machinery is spelled out in Rule No. 52 and this Board has repeatedly held that when a rule is clear and unambiguous, practice does not supersede the rule.

Therefor the majority erred in making these awards.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink