Award No. 3388

Docket No. 3112

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 award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the carrier improperly contracted one (Thew-Loraine) No. 5 Dragline out to the J. D. Pittman Tractor Company, Birmingham, Alabama, for general repairs which was completed in the month of January, 1957.

2. That accordingly the carrier be ordered to pay to Machinists A. R. Marshall, I. F. Baker and E. G. Fields, $2,432.25, to be equally divided among them account of this violation of —rule 52—of the Controlling Agreement.

EMPLOYES STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, contracted with the J. D. Pittman Tractor Company, Birmingham, Alabama, to give one Thew-Loraine No. 5, dragline, general repairs which work was completed during the month of January, 1957, at a total cost of $4,862.88, with work coming under the machinists classification of work rule 52, amounting to $2,432.25, the amount of this claim. Machinists A. R. Marshall, I. F. Baker, and E. G. Fields, hereinafter referred to as the claimants, held seniority as machinists with the carrier at Macon, Georgia, were assigned to handle repairs to roadway machinery at the time involved in this claim and were available for and qualified 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 EMPLOYES: 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:

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 employee 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, therefore, 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 determination in this case is governed by the conclusion reached in Award No. 3387 this day decided.

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 ours.)

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