

Award No. 3390

Docket No. 3114

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, A. F. of L.-C. I. O. (Machinists)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier improperly assigned other than Machinists to make repairs to sweeper engine and crosstie puller at or near Blakely, Georgia, on March 4, 1957.
2. That accordingly the Carrier be ordered to additionally compensate Machinist R. M. Martin, in the amount of \$19.00, account of this violation.

EMPLOYEES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, employs travelling machinists, called "Roadway Mechanics," whose bulletined assigned duties are to "make repairs to all roadway equipment such as motor cars, weed burners, tamping machines, power tools, etc., and other work assigned."

The carrier has a number of mechanized gangs in the Maintenance of Way department and it is customary for the carrier to assign one, or more, roadway mechanics (machinists) to each of these gangs to make such repairs and adjustments as can be made without having to send such roadway equipment back to the shops for repairs.

One of these roadway mechanics, M. H. Burden, was working with one of these mechanized gangs at or near Blakely, Georgia, on March 4, 1957, and would have been available had he not been working on another piece of equipment at the time.

The carrier contracted with the Hill Implement Company of Blakely, Georgia, to make minor repairs and adjustments to sweeper engine and crosstie puller rather than wait for Roadway Mechanic Burden to make the repairs or call another machinist from Macon, Georgia.

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, 3768, 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 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 agreement on this property, the Board should 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.

Rule 52 (Classification of Work) does not specify the work involved in the present case. The record shows that for many years the carrier has frequently assigned to others the performance of this type of work. We therefore conclude that an agreement violation did not occur in the instant matter.

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