

Award No. 3544
Docket No. 2942
2-TPMPT-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. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)
TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD
OF NEW ORLEANS**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement and Shop Bulletin No. 12, dated New Orleans, Louisiana, December 9, 1948, the Carrier improperly assigned other than machinists to make repairs to $\frac{3}{4}$ ton Chevrolet Truck at its Machine Shop, New Orleans, Louisiana.

2. That accordingly, Carrier be ordered to discontinue using other than machinists to perform this work and compensate Machinist A. P. Grentz, hereinafter known as the claimant, for 120 hours at the machinist overtime rate of pay covered effectively between March and April 1957.

EMPLOYEES' STATEMENT OF FACTS: At New Orleans, Louisiana and at Avondale, Louisiana the carrier and the shop craft organizations, including the machinists, have a working agreement which is currently in effect that provides for work to be performed in the maintenance of equipment department. The carrier violated the provisions of this agreement in March and April, 1957 when they assigned work of overhauling a $\frac{3}{4}$ ton Chevrolet Truck, that was primarily used at its Avondale Shop, to others than machinists. The truck was repaired by an employe of the TP-MP New Orleans Terminal who is not covered by an agreement from any craft recognized by the carrier under agreement with our organization. The Chevrolet Truck is part of equipment assigned to and operated under shopmen's agreement, which makes it a part of the maintenance of equipment scope of our agreement. Rule 39(a) of our agreement specifically covers repairs thereto. In the past such repairs have been made by our craft as per agreement currently in effect between the carrier and the machinist who are parties of the agreement by and between the carrier and System Federation No. 121. In addition thereto there is a shop bulletin currently in effect, dated December 9, 1948, that specifically, in addition to Rule 39(a) of the controlling agreement, gives this work to the machinist craft.

This dispute was handled with carrier officials designated to handle such affairs, who declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended and Bulletin No. 12, dated December 9, 1948, is controlling.

road mechanical department in its physical location and in its place in this carrier's organization of authority and functions, but also that the employees engaged in that work have and must have distinctly different skills, which those in the mechanical department have not been trained for, and do not possess. It is not railroad work, and it never has been railroad work. If it were under the system federation agreement, the machinists would not be competent to do very much of it, and, even if they were, the carmen and the electricians and the sheet metal workers, and probably also the boilermakers and blacksmiths, would claim it too, creating a hopeless confusion of jurisdictional disputes on every repair job.

The proper way for the International Association of Machinists to proceed, if it wants to undertake to further its present objective, would be in accordance with Section 2, Ninth, of the Railway Labor Act, rather than by a time claim under Section 2, Sixth, and Section 3, First (i). If they were to secure lawful representation of our employees in our automotive repair shop in that manner, those employees would then be a separate bargaining unit. System Federation No. 121 of the Railway Employees' Department,—not the International Association of Machinists, holds representation of mechanics of all crafts employed in our mechanical department. It would be impossible to operate an automotive repair shop under the system federation agreement. This proceeding is entirely irregular.

For the reasons stated, the carrier respectfully requests the board to dismiss or 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 employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The work in dispute consists of the overhauling of a $\frac{3}{4}$ ton 1950 Chevrolet truck, which was performed at Carrier's automotive repair shop in New Orleans by non-schedule employees during the period from March 15 to April 1, 1957. Claim is made that the subject work is reserved to the machinist craft under the subject agreement and that claimant machinist was entitled to perform this work at Carrier's machine shop at Avondale—which is located across the river from New Orleans. This truck had been assigned to the Car Department at Avondale and was used to haul men and equipment to and from various points where Carrier operates in and near New Orleans.

The Organization relies on Rule 39 (a)—the machinists' classification of work, Rule 21 (s)—which provides in pertinent part that "none but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft * * * and on Bulletin No. 12 which was issued on December 9, 1948 to advertise the machinist position which subsequently was awarded the present claimant and which stated in pertinent part: "General machinist work and millwright, such as maintaining Shop machines, Power Plant machines, automotive equipment and etc."

Rule 39(a) does not expressly refer to the maintenance or repair of automobiles or trucks. It is agreed that automotive work has been performed in the machine shop by members of the machinist craft. The record shows quite

conclusively, however, that a very substantial amount of automotive repair work has been performed by other than machinists covered by the subject agreement. A large part of this work has been contracted out, and this practice antedates the controlling agreement. Some of this work has been performed in the Carrier's automotive repair shop since about 1951. The $\frac{3}{4}$ ton Chevrolet truck in question has been repaired by outside firms on numerous occasions since 1951 and was given an overhaul by the Carrier's automotive repair shop in 1955. Other Car Department automotive equipment also has been repaired by other than machinists on numerous occasions both before and since the effective date of the current agreement.

In the absence of express language in Rule 39(a) reserving the subject work to the machinist craft and in the light of the fact that work of this character has not been done exclusively by said craft, it cannot be held that machinists covered by the agreement have exclusive jurisdiction over such work. Bulletin 12 did not confer such exclusive jurisdiction. It merely described the nature of the work which the successful bidder would be required to perform. The subsequent reposted assignment of automotive repair work to others without protest by the Organization must be deemed to be tacit recognition that exclusive jurisdiction was not conferred by said bulletin.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3544

Award No. 3544 is erroneous for the following reasons:

Rule No. 39 (a), Machinists' Classification of Work Rule reads in part 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 * * * engine (operated by steam or other power) * * * and all other work generally recognized as machinists' work."

Award No. 170 of this Division, without a referee, interpreted this language to mean that it covered the maintenance of gas engines or gasoline motors that were involved in that dispute—and, again in Award No. 726 of this Division, with the assistance of a referee, this same question of maintenance of gas engines being machinists' work, was upheld.

The truck involved in this dispute was a Mechanical Department truck being assigned to the Car Department, so it was Mechanical Department equipment.

The carrier posted a bulletin for a machinists position which for the purpose of identification in the record is described as "Bulletin No. 12" which listed as the duties of the position in part as follows:

"General machinist work and millwright, such as maintaining shop machines, power plant machines, automotive equipment, and so forth." (Emphasis ours)

Said position was awarded to the claimant on the basis of his seniority and ability, pursuant to the current agreement governing the employment of machinists.

Therefor we dissent.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink