

Award No. 3635

Docket No. 3515

2-CRI&P-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the building, assembling, dismantling and repairing of diesel engines is Machinists' work under the current agreement.

2. That on July 31, 1958 the Carrier transferred the overhauling and repairing of one 12 cylinder, Model 567-A diesel engine, Serial No. 3556, from its shops at Silvis, Illinois to the Electro-Motive Division of General Motors Corporation.

3. That, accordingly, as a penalty for the aforementioned violation, the Carrier be ordered to compensate Machinists B. Sidebottom and George Madison 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 Electro-Motive Division of General Motors Corporation for repairs to this engine, or 1440 hours of pay at the time and one-half rate to be equally divided between the claimants.

EMPLOYEES' STATEMENT OF FACTS: This carrier maintains its largest diesel locomotive repair shop at Silvis, Illinois, which shop is fully equipped to make any and all repairs to diesel locomotives and diesel 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 assembled, in addition to a running repair department.

Machinists are regularly assigned at Silvis Shop to completely overhaul all types of diesel engines, including the 12 cylinder, E.M.D. engine referred to in this claim, and such rebuilding and overhauling is performed daily in this shop.

on the property was for 144 hours' pay (not 1440 as shown in employes' statement of claim). The latter amount was never a matter of negotiation on the property. Therefore, only claim for 144 hours' pay can be before your Board.

On the basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employes' 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.

Parties to said dispute were given due notice of hearing thereon.

The organization claims in behalf of B. Sidebottom and George Madison that the carrier transferred the overhauling and repairing of one 12 cylinder, Model 567-A diesel engine, Serial No. 3556 from carrier's diesel locomotive repair shop at Silvis, Illinois to the Electro-Motive Division of General Motors Corporation in violation of Rules 27, 28, 53, 135 and the scope rule of the controlling agreement.

In effect, the claim charges that the carrier evaded the restrictions found in the agreement against sending machinist's work to an outside firm by using a unit exchange purchase plan. By this plan diesel engine 3556 was turned over to the Electro-Motive Division for an overhaul and rework job and carrier received immediate delivery of a replacement engine already overhauled and reworked in exchange for the cost of materials and labor applied to engine 3556.

The current agreement assigns the machinists' jurisdiction over the work of their craft in all departments subject to the stipulated exceptions: 1, except where this work is performed by other employes under agreements with the carrier, and 2, except such work as may be necessary to send to the factory for repairs, rebuilding, replacement or exchange in accordance with existing practices on the property.

Past awards have clearly defined that the carrier must be supported by practices, a necessity and must send the work to the factory of origin. (1865, 1866, 1943, 2841, 3235, 3456, 3457).

On the other hand, the carrier retains the prerogative to buy or sell its equipment. Moreover, the unit exchange purchase plan, here in dispute, has been held to be encompassed within carrier's prerogative to buy and sell its equipment (2188, 2377, 2922, 3158, 3184, 3185, 3228-3233, 3269, 3585 and 3586).

It is clear that if engine 3556 was sold no work existed to be assigned to the machinists, since their work must be confined to carrier's property. The

organization has made a showing that this unit exchange purchase plan is subject to abuse by carrier's officials for it could be used to defeat the purpose of the reservations on management prerogatives stipulated in the memorandum of understanding on Page 69 of the agreement. The awards cited above have recognized the possibility of subterfuge and, especially in 3269, 3585 and 3586, have held that the transactions in dispute appeared to have been completed in good faith.

In the claim before the Board the carrier concedes that it did sell engine 3556 to Electro-Motive Division, pay the material and labor costs for remanufacturing that engine and receive immediate delivery of an exchange engine. The carrier contends that this was a managerial decision open to it, permitting the carrier to take advantage of Electro-Motive Division's offer of a warranted, remodeled and remanufactured engine superior to an engine worked in carrier's own shop. The mere fact that carrier exercised this choice which was open to it cannot be held to constitute bad faith even where it may result in a loss of employment to carrier's machinists.

The organization has failed to show that carrier acted in bad faith and therefore its claim must be denied.

It is without question that the carrier has the right to purchase equipment by means of the unit exchange plan, just as it is without question that the organization has jurisdiction over machinist work as specified in the scope rule and the classification of work rule of the agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1961.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3635 and 3636

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 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.)

The carrier's farming out (sub-contracting) of the instant work is in violation of the agreement governing the employment of machinists. Therefore Awards Nos. 3635 and 3636 are in error.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink