

Award No. 3636
Docket No. 3516
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 EMPLOYES'
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 16 cylinder, Model 567-B Diesel engine, Serial No. 52-L-177, 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 Robert Brown and Raymond Duncan 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 192 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 16 cylinder, E.M.D. engine referred

previous cases from the carrier before your Board and in those cases your Board in Awards 3228, 3229, 3230, 3231, 3232, 3233 (Referee Ferguson) and 3269 (Referee Hornbeck) rendered decisions in favor of this carrier. Further, Awards 2377, 2922, 3158, 3184 and 3185 have also upheld carriers in similar cases.

We submit, also, without relinquishing our position as above, that the claimants involved were fully employed and, of course, can show no loss of earnings or injury in connection with this case, but assuming their claim has merit, which, of course, we deny, it is a well-established principle of this and other Divisions of the Adjustment Board, that if penalty is to be assessed by this Board—and there is no rule of the employees' agreement providing for such—it can only be at pro-rata rate.

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

This claim on behalf of Machinists Brown and Duncan is denied in accordance with the findings in Award No. 3635.

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