

Award No. 3660

Docket No. 3407

2-CofG-MA-'61

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 EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement on November 15, 1957, when it assigned the handling of an engine change-out on a ballast regulator machine at Gantt, Alabama, to the Baker Mayfield Company at Macon, Georgia.

2. That accordingly the Carrier be ordered to additionally compensate Machinists R. W. Ray and L. S. Williams in the amount of eleven (11) hours at their applicable overtime rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Machinists R. W. Ray and L. S. Williams, hereinafter referred to as the claimants are regularly employed as machinists by the Central of Georgia Railway Company, hereinafter referred to as the carrier, in carrier's main heavy repair shop at Macon, Georgia, and were available to have been used, if called, from the overtime board on their rest days.

On November 14, 1957, one six cylinder series 240 International Gasline Engine failed on Ballast Regulator No. 5 Machine, at, or near Gantt, Alabama. The carrier elected to use employees of Baker Mayfield Company (International Harvester Company dealers) from Macon, to change out this defective engine on November 15, 1957, rather than to use its own employees who hold contractual rights to such work.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer designated by the carrier, all of whom have failed to make satisfactory adjustments.

"Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. See Awards No. 507, 1257, and 1397."

The work performed by contractor at Gantt, Alabama, was at no cost to the railway company under their warranty to the carrier. Such free service could not have possibly deprived claimants of anything. The claim has no semblance of merit.

The claim is apparently 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 employe or group 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, 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 no other. Carrier so urges.

It is the further position of the Carrier that the burden of proof rests squarely upon the shoulders of the petitioners. See **Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others.** Also see **Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2676 and others—**all of which clearly state that the burden of proof is on the claimant party to prove an alleged violation of the agreement.

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 Exhibits "A" and "B" was in keeping with accepted historical 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 waived right of appearance at hearing thereon.

The work in dispute is the changing of the engine in a ballast regulator plow machine. The engine exchange and installation were performed by the engine manufacturer's dealer under a warranty, and at no cost to the carrier. The installation of the new engine was made necessary by the failure of the original engine supplied by the manufacturer.

The subject work having been performed under a warranty, there is no basis for a finding that the agreement was violated as charged by the petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1961.

LABOR MEMBERS DISSENT TO AWARD NO. 3660

The findings by the majority that the work was performed by an engine manufacturer's dealer under a warranty completely ignored the fact that such warranty does not take precedence over clear and unambiguous rules of the current agreement.

The Preamble of the current agreement prescribes as follows:

"It is understood that this Agreement shall apply to those who perform the work specified in this Agreement."

Rule 132 reads:

"Except as provided for under the special rules of each craft, the General Rules shall govern in all cases."

Machinists Special Rule 52, of the current agreement, describes the work of "installing engines" as being machinists' work and the carrier posted bulletins for machinists positions which were bid in as "Roadway Mechanics" listing the duties of said positions as follows:

"To make repairs to all roadway equipment such as motor cars, weed burners, tamping machines, power tools, etc. and other work assigned."

Therefore rules of the current agreement cover said work and the award is erroneous.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink