

Award No. 3663
Docket No. 3298
2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1)—That the overhauling and maintenance of trucks and buses comes within the scope of the current Agreement as being Machinists' work.

(2)—That the Pennsylvania Railroad Company by unilaterally transferring the repair work on Bus No. 88011 and Truck No. 89554 to the Truck Sales and Service Garage, in the last week of May 1956, violated the Agreement.

(3)—That accordingly the Pennsylvania Railroad Company be ordered to—

(a)—Desist from unilaterally transferring the repair work and maintenance work on said truck and bus to outside local garages.

(b)—Compensate B. B. DeMuth, Machinist, in the amount of two (2) days' pay because of this violation.

EMPLOYEES' STATEMENT OF FACTS: Machinist B. B. DeMuth, hereinafter referred to as the claimant, is regularly employed, bulletined and assigned as a machinist, Grade C, in the carrier's Dennison, Ohio Shops, with a first shift tour of duty from 7:00 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday rest days. Claimant B. B. DeMuth has a seniority date as a machinist from October 19, 1922. The claimant obtained his advertised position in August, 1955, by exercising seniority over L. O. Dodson, who had been on the advertised position since 1946. The duties, as advertised and awarded, consisted of the following: "Making maintenance repairs to machinery and equipment; inspecting and making maintenance repairs to air compressors at Newark and Georgetown, Ohio and the passenger elevator located in the Station at Newark, Ohio." The duties of the claimant and the date of the assignment are confirmed in the joint statement of facts of the joint-submission prepared on the property by the local chairman and the superintendent-personnel.

In this connection, your Honorable Board in Award 1638, Referee Edward F. Carter, held that an employe "should be made whole,"¹ and that this measure of damages not only eliminates punitive damages which are not favored in law, but "conforms to the legal holding that the purposes of the Board are remedial and not punitive"; finally, that the purpose of this Board "does not include the assessing of penalties in accordance with its own notions to secure what it may conceive to be adequate deterrents against future violations." In Award 7082 of the Third Division, Referee Dudley E. Whiting, it was held:

"Claimant worked the assigned hours of this position performing work within the craft and class to which he belonged and was paid the highest rate applicable to either position. He was in no way injured and a claim on his behalf is therefore wholly lacking in merit."

It is submitted, therefore, that the claimant is not, under any circumstances, entitled to the penal compensation sought in paragraph 3 (b) of the employees' statement of claim.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees' Department, A. F. of L.—C. I. O., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has conclusively shown that there has been no violation of the applicable agreement in the instant case and that the employees' claim is without merit.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

¹Ibid. Making the employe whole simply means he shall suffer no loss.

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.

Claimant was regularly assigned as Machinist, Grade "C," in Carrier's shops at Dennison, Ohio. The duties of his assignment included "making maintenance repairs to trucks and busses" in the garage where certain over-the-road vehicles received periodic inspection.

It appears from the joint statement of facts that during the last week of May, 1956, two trucks assigned to the Supervisor of Track, Maintenance of Way Department, were given periodic servicing and repairs by an outside service garage. Carrier admitted that these pieces of automotive equipment, prior to 1956 were serviced and repaired in the shop garage at Dennison and that thereafter the Maintenance of Way Department arranged for the service and repair work on this equipment to be performed by a local garage. Later, investigation by carrier disclosed that the work actually performed on these vehicles at the time stated in the claim was that of painting and some heavy repair. The organization has made no claim to the painting but asserts the exclusive right to servicing and repair of these over-the-road trucks both from recognized practice and under Rule 5-F-1, which reads:

"None but mechanics or apprentices regularly employed as such shall do work specified as that to be assigned to fully qualified mechanics."

and also under the Graded Work Classification of the agreement.

Carrier has shown specifically in its submission that machinists have not exclusively performed such repair and servicing of Maintenance of Way vehicles in the past and that it has frequently been contracted out. Neither Rule 5-F-1 nor the Graded Work Classification provision of the agreement is a scope rule giving exclusive right to work. Awards 1957, 2544 and 2545.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February, 1961.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3663, 3664 and 3665

The evidence of record in this dispute shows that the automotive equipment involved in this dispute had been serviced and repaired in the shop at

Dennison, Ohio, and the majority so state in the findings — then they proceed to erroneously construe the intent and meaning of Rule 5-F-1 and the Graded Work Classification of the current agreement. Therefor Awards Nos. 3663, 3664 and 3665 are in error.

/s/ Edward W. Wiesner

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ James B. Zink