

Award No. 3816

Docket No. 3277

2-CRI&P-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. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

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

2. That on May 23, 1955 the Carrier transferred the overhauling and repairs of one 16 cylinder diesel engine, serial number 52-D-150 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 G. H. Kortum and F. G. Ehlers 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 the Electro-Motive Division of General Motors Corp. for the overhauling and repairs to this diesel engine.

EMPLOYEE'S STATEMENT OF FACTS: This carrier maintains at Silvis, Illinois its largest diesel locomotive repair shop, which 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 to in this claim, and such rebuilding and overhauling is performed daily in this shop.

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.

Under their agreement claimants craft had the contract right to maintain carrier's diesel engines, but carrier had the right to determine what engines it desired to have maintained as well as the right to dispose of such engines as it determined not to maintain by sale or exchange, with the sale price applied on the purchase price of the engine received, provided that it did not by subterfuge or indirection farm out its work of maintenance, repair and overhauling which its employes had the right to perform.

Carrier has shown that the diesel engine here involved was obsolete; that it was traded in as part payment of the purchase price of another diesel engine received from the Electro-motive Division of General Motors Corporation from which it had been purchased; that if it was overhauled and rebuilt, so far as known it has not been resold or returned to this property; that the engine received in its place had not theretofore belonged to carrier but was purchased from some other user and had been dismantled and rebuilt at the factory to include major improvements and altered and improved design, making it a new model engine with a new engine warranty. Admittedly, machinists continued to be employed by carrier in the overhauling and rebuilding of diesel engines which it kept in service, and it has not here been established that carrier violated the agreement in the exchange of diesel engines here complained of. Awards 3228 and 3269 determining like issues between the same parties should be followed here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1961.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3816 AND 3817

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. 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 Departments 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.)

When the carrier sub-contracted this work it violated not only the said agreement but Section 2, Seventh of the Railway Labor Act. The Board should have ordered the carrier to obey the command of Section 2, First of the Act by complying with its duty to maintain the existing agreement.

T. E. Losey

Edward W. Wiesner

E. J. McDermott

C. E. Bagwell

James B. Zink