Award No. 3901
Docket No. 3726
2-HBL-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Machinists)

HARBOR BELT LINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier was not authorized to use Pacific Electric Railway Company machinists to perform eight (8) hours machinists' work in connection with Federal Inspections performed on Harbor Belt Line Diesel Units 1006 and 1016 on January 9, 1959, and on January 16, 1959 to import and use Southern Pacific Machinist E. Rose, to perform more than two (2) hours machinists' work on Harbor Belt Line Diesel Unit 5294, in violation of the controlling Agreement.

2. That accordingly, the Carrier be ordered to additionally compensate Harbor Belt Line Machinist R. F. Callender (hereinafter referred to as claimant) eight (8) hours at the overtime rate of pay for January 9, 1959, and an additional two (2) hours and forty (40) minutes at the overtime rate of pay for January 16, 1959, or a total of ten (10) hours and forty (40) minutes at the punitive rate of pay.

EMPLOYES' STATEMENT OF FACTS: It has been a consistent accepted practice since 1929 for machinists and employes of other crafts employed by the Harbor Belt Line Railroad to perform all inspection work, repairs and maintenance work on locomotives assigned to Harbor Belt Line Railroad. There is no dispute in the record regarding this fact.

Diesel Units 1006 and 1016 were assigned to Belt Line service and were being used within the recognized zone of Belt Line operations immediately prior and subsequent to date of January 9, 1959, on which date they were sent to Watts, California and given federal inspections by Pacific Electric machinists.

Diesel Unit 5294 was also assigned to Belt Line service, and was being used within the recognized zone of Belt Line operations immediately prior and subsequent to date of January 16, 1959, on which date Southern Pacific

In relying on Rule 21, the only comment we find is the comment in last paragraph of carrier's Exhibit I. There the general chairman states that there can be no question that the scope and Rules 20 and 21 of the agreement were violated " * * * in the circumstances related herein * * *."

Rule 21 simply provides that none but mechanics classified as such shall do a mechanic's work. There are certain exceptions provided for foremen and for instances where cross craft operation is permissive where there is not sufficient work to justify employing a mechanic of each craft. This rule comes into being only after jurisdiction to do the work is determined from the scope rule. In the absence of the work being within the jurisdiction of the Mechanical Department of the Belt Line, Rule 21 is not applicable.

The employes also rely on Rule 33. This rule is simply a classification of work rule. We fail to find where the rule is applicable in the absence of jurisdiction to perform the work. Here again we find the condition where the rule is subordinate to the scope rule.

The claim is entirely without merit in its entirety and should be denied. An affirmative award in this case would create chaos and confusion insofar as the Belt Line operations and those of the Pacific Electric and Southern Pacific are concerned.

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 juisdiction over the dispute involved herein.

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

Compensation is here claimed on behalf of a Harbor Belt Line machinist as a result of the performance of 8 hours of machinists' work on two diesel units Nos. 1006 and 1016 which work was performed on January 16, 1959. Claim is also made on account of the performance of 2 hours of machinist work on Diesel Unit 5294.

The employes maintain that Harbor Belt Line owns no locomotives and that they are entitled to perform all inspection work, repairs and maintenance on locomotives assigned to Harbor Belt Line Railroad. They further argue that customarily they have performed work on locomotives which operate within the Belt Line Zone.

Carrier's position is that these locomotives were not assigned to Belt Line Service — that at most they had been engaged in delivering cars to the Belt Line territory for switching service. A list of locomotives which were actually assigned to Belt Line service is contained in the Carrier's rebuttal. The locomotives in question are not among these.

The scope clause of the basic agreement together with Rules 20 and 21 relating to seniority of employes and classification of work are cited by

employes and are not shown to be germane to this controversy. In fact, no rule of this agreement has been called to our attention which specifically covers the conditions under which Belt Line has jurisdiction for the purpose of rendering service like that which is here involved. The only criterion which both sides agree must be satisfied is that the equipment must have been assigned.

The controversy reduces itself to this: Both sides agree that the locomotives operated on Belt Line Property. The equipment was admittedly under the control of Pacific Electric and Southern Pacific crews. Both Carrier and employes agree that assignment to Belt Line is an essential to the existence of Belt Line jurisdiction. Were these locomotives assigned to Belt Line? Carrier maintains they were not assigned. Employes say that they were. How are we to determine whether the locomotives were assigned? We are furnished no rule, guide or other criterion by which to determine this. Section 30 of the Unified Contract for operations at Los Angeles Harbor seems to cover the problem but this is outside the record.

The burden of proof was on claimants to establish these claims and this burden could have been satisfied only by showing legal entitlement. A rule or principle recognizing entitlement based on actual operations in Belt Line Territory would have been necessary. Employes have failed to make such a showing and therefore have not carried their burden of proof. The letter of Master Mechanic Davis does not supply the deficiency.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1961.

LABOR MEMBERS DISSENT TO AWARD No. 3901

The majority were apparently swayed in their thinking by "Section 30 of the Unified Contract for operations at Los Angeles Harbor" which is not a contract between the parties to this dispute.

The majority ignored the current agreement in effect on the Harbor Belt Line Railroad in its entirety.

The agreement covers the machinists employed by the Harbor Belt Line Railroad. Rule 33, Machinists' Classification of Work Rule, covers the work in question, Rule 20 provides for the seniority of Harbor Belt Line Railroad machinists, and said agreement contains no exceptions permitting machinists from other railroads to perform any work on the Harbor Belt Line Railroad property.

Therefore the award is erroneous.

LABOR MEMBERS

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

F. J. McDermott

James B. Zink