Award No. 4043

Docket No. 3851

2-SLSW-FT-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Federated Trades)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the Carrier arbitrarily damaged certain shop craft employes when during the month of June, 1959, the work of placing a newly purchased switching engine in service was assigned to B&B forces.

2—That accordingly the Carrier be ordered to:

(a) Additionally compensate Machinist C. E. Landreth and Painter E. E. May, eight (8) hours each at the punitive rate.

(b) Return the assignment of service on so-called trackmobile to the Employes of the Mechanical Department.

EMPLOYES' STATEMENT OF FACTS: During the month of June, 1959 a switching locomotive of new design was delivered to the St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, at its Pine Bluff, Arkansas Shops. In addition to many items of mechanical adjustments and preparation for service, the carrier elected to repaint and redecorate the machine prior to its entry into service. All of this service was assigned to and accomplished by B&B forces.

During the above mentioned period, Mr. C. E. Landreth and Mr. E. E. May, hereinafter referred to as claimants, were regularly assigned at carrier's Pine Bluff Shops, as machinist and coater and varnisher respectively, and by virtue of their assignments and positions on their respective overtime boards were entitled to the service performed by B&B forces. Time claims were therefore instituted in their behalf along with the protest of the assignment of this work to other than mechanical department employes, and the dispute was progressed through the proper channels up to and including the highest designated officer on this carrier, who has declined to adjust the matter.

The agreement effective November 1, 1953, as subsequently amended, is controlling.

In the present case the carrier has shown that, on this property, work in connection with equipment of the type involved has been performed by others, as well as mechanical department employes, for many years and that such work has never been considered as belonging exclusively to any craft. It has also been shown that even on similar type equipment assigned to exclusive use of the mechanical department, repairs have in the past been made by roadway machine shop employes.

Thus the employes have never had exclusive right to maintain and repair automotive type equipment owned by the carrier, nor is such equipment of a type which the agreement gives them right to maintain.

In conclusion the carrier respectfully submits that the facts outlined show the claim is not supported by the rules and should be denied.

Without prejudice to its position that there is no basis for claim on any basis, carrier respectfully submits there is no basis for the claim as submitted to the Board. It will be noted the claim is to the effect that the trackmobile was placed in service in June 1959. As stated above the first trackmobile was not received until July 1959. Whiting Corporation Invoice F-15115 July 14, 1959, shows order received June 30, 1959, and the trackmobile shipped on car IC-6116 from Harvey, Ill., July 14, 1959. Train sheets show this car was received in Pine Bluff 10:40 A. M., July 17, 1959.

There was no allegation in handling on the property that the machine was received in June. Thus there could be no basis for the claim as submitted. The first trackmobile was not received until July 1959.

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.

In 1959 carrier received a trackmobile for use in moving one or more cars from spot to spot in its heavy and light car repair shop at Pine Bluff, after the cars had been moved into the area by yard engines. (Upon completion of the repairs, the cars were removed from the repair shops by yard engines.) Before putting the new prime mover into operation, carrier had it peconditioned and repainted by B. and B. employes in its Roadway Machine Shop. This decision led to the instant claim.

The trackmobile was a novel kind of motive equipment. It was powered by a gas engine and it was equipped with rubber tires for movement across tracks, with car wheels for movement on tracks, and with small couplers for attaching to car couplers.

Before the trackmobile came into use, it appears from the record, cars in the repair shop had been moved from spot to spot by winch-and-cable, tractors, shop mules, power capstans, transfer tables, and pinch bars. (It is not clearly established that switch engines were ever employed for said

purpose.) It appears further that, at least until recently, most of the conditioning and repair work on equipment (except perhaps tractors) in the car repair area had been done by Mechanical Department employes.

The uniqueness of the trackmobile posed the classic jurisdictional question that underlies the instant claim, namely, to which craft(s) or class(es) of employes does work thereon belong? Petitioner claims the work mainly on the ground that the trackmobile is essentially a locomotive that does switching. Carrier contends that the trackmobile is fundamentally automotive in nature, such as a tractor or truck.

Without going into a detailed analysis of the rather voluminous submissions of the parties, the Division concludes therefrom that in its looks and makeup, as well as in the function it performs, the trackmobile is neither a traditional switching locomotive nor a traditional kind of automotive equipment. It must indeed be held unique. Then, on the narrow grounds that petitioner had failed to sustain its burden that the equipment is a locomotive which does switching, this claim might be denied.

But a broader approach is required in order to properly settle the case. Rules 43, 87, and 97, quoted and analyzed by both parties in respect to machinists and carmen, must be considered. These Rules mention kinds of equipment other than locomotives. They also list operations (such as fitting, grinding, painting, and varnishing) that are applicable to equipment other than locomotives. And these Rules, in their concluding phraseology, recognize past practice on the property.

Then, in the light of the findings of fact on past practice set forth above in the 4th preceeding paragraph (in respect to conditioning and repairing equipment used to move cars within the car repair area), the Division must rule that, so far as the instant case is concerned, carrier wrongfully deprived claimants of the work here in dispute. A sustaining award is in order except that claimants shall be paid at the straight-time rate.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962.