

Award No. 4172
Docket No. 4053
2-GN-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the overhaul and repair of Yale Fork Lift Truck, G.M. 21005, serial #543551, model #KG-51-AT-4QU, with Chrysler Industrial Engine model #30-104 butane fuel, was contracted by the Carrier to the Zeco Company, Minneapolis, Minnesota.

2. That the Carrier accordingly be ordered to compensate Dale St. Shop Machinist Frederick Lichtenberg in the amount of six (6) hours' pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: On December 16, 1959, the carrier at Dale St. Shops contracted the work of overhauling and repairing Yale Fork Lift Truck, G.N. 21005, to the Zeco Company, Minneapolis, Minnesota. The following repairs were ordered for this unit:

1. Repair oil leaks in engine
2. Adjust brakes
3. Clean and adjust carburetor
4. Clean propane pressure regulator
5. Check and repair hydraulic system

This fork lift truck was returned to Dale St. Shops on January 22, 1960, equipped with a new carburetor, new propane pressure regulator, and had been given a general tune-up, including the ignition system.

The dispute was handled with all carrier officials designated to handle such affairs, all of whom declined to adjust the matter.

burden of proving with positive evidence that a violation of some clear agreement provisions has occurred. It is obvious from the foregoing that the claimant organization has failed absolutely to produce any proof whatsoever that a violation of the agreement has occurred.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to have its equipment repaired in whatever manner is necessary or desirable unless the power to make such decisions has been limited by law or some clear and unmistakable language in the collective bargaining agreement.

2. In order to carry its burden of proof in this case, the organization must show that it has secured the exclusive right by agreement and practice to perform repairs and maintenance on Stores Department fork lift trucks. It is not enough to show that machinists have performed some of that work in the past.

3. The only evidence submitted by the organization to support its case while handling this claim on the property was an allegation that the work is covered by Schedule Rule 49 and that machinists have performed similar work.

4. The carrier has shown that it has been the unprotected practice to send fork lift trucks from the stores department to factory-authorized service companies for many different types of repairs.

5. Rule 49 does not mention repairs and maintenance of fork lift trucks.

6. Many Awards of this Board have held that rules essentially identical to Rule 49 do not give machinists the exclusive right to perform repairs on various types of machines and equipment which are not specifically named in the language of such rules, especially where machinists have not exclusively performed such work in the past.

For the foregoing reasons the carrier respectfully requests that the claims of the employees be denied.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

As stated in the claim, employees contend that carrier violated the current agreement of the parties by having the overhauling and repair of a Yale fork lift truck accomplished under contract by the Zeco Company of Minneapolis, Minnesota, the distributor and factory service representative for Yale equipment in the Twin Cities area. This work, they allege, should have been done by the carrier's machinists.

However, the record indicates that the Yale fork lift truck in question was equipment of carrier's Dale Street Stores Department, which department has regularly sent out material-handling equipment to factory service representatives when judged necessary or desirable (Award 1777). This same practice is very generally followed at nearly all points along this railroad and has been the case since material-handling devices were first developed and utilized. The record details a considerable number of instances where such equipment of different types and uses was sent to outside firms for overhaul, repairs and replacements.

The issue here involved has been the subject of a considerable number of claims which have come before this Board. Award 1110 concerned the maintenance and repair of automotive trucks and tractors. In denying the claim it was said:

"The mere fact that the machinists have in some instances done the work is not of importance where it does not appear that there has been a practice under which they have done it exclusively."

Award 1808 had to do with the repair of a Ford Station Wagon. In its findings, the Board cited the above Award 1110 and went on to say:

"Mechanical forces have the exclusive right only to the work embraced in their scope rule and other work exclusively performed by them under an established practice. The claim is not sustainable under either contingency."

See also Awards 3170, 3387 and 3544.

The Board is unable to find that the employes here have sustained the burden of proving that claimant had the exclusive right to the work in question either by the agreement or by past practice. This being so, we must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1963.