

Award No. 4325
Docket No. 4279
2-AT&SF-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY (Western Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Shop Craft's Agreement, the Employes' of the Machinist Craft at Wellington, Kansas claim that the provisions of Rule 52, Rule 49(b) and Item 4 of Letter of Understanding dated January 31, 1948, and having for its purpose positive identification of work properly that for Motor Car Maintainers to perform, have been arbitrarily violated by the Carrier account it assigning a roadway equipment machine operator and helper to repair certain portions of a gasoline engine supplying needed power for a roadway ballast regulator AT 1552 on October 18, 1960;

2. That as a consequence of such arbitrary assignment the carrier be ordered to pay Machinist Irven Nuss of Wellington, Kansas sixteen (16) hours additional compensation at machinist pro-rata rate account such improper assignment of work to others than machinists to perform.

EMPLOYEES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, maintains machinists, including Machinist Irven Nuss, hereinafter referred to as the claimant, to perform among other things, the work involved in this dispute.

At Alva, Oklahoma on October 18, 1960, Roadway Equipment Operator Howard Davis and Roadway Equipment Helper Pete Arabella made repairs to the engine power plant on ballast regulator AT1552. These employes were neither machinist or machinist helper.

The carrier also maintains motor car repairmen, who are machinists assigned on line of road to maintain such work equipment as is here involved.

This dispute has been handled with all subordinate carrier officers authorized to handle disputes with the result that all of them declined to adjust it. It was then appealed to Mr. L. D. Comer, Assistant Vice President, who is the Carrier's highest officer designated to handle grievances.

showed a full days pay and would have so shown whether they had ground the valves or not.

In conclusion, the carrier reasserts that the employes' claim is entirely without support under the governing Agreement rules or interpretations thereof and should be either dismissed or denied in its entirety, for the reasons expressed herein.

This claim is actually an effort on the part of the organization to persuade your Board, to give an improper award, in order to expand the scope of the existing rule so as to provide monopolistic wording. The present rule does not provide this organization with such monopolistic rights, nor does it provide that such jobs as grinding valves in the field is a major repair job. This is crystal clear in the assertion made by Mr. Fox in asserting the claim under Caption 1, wherein he characterized the present rule as "* * * having for its purpose positive identification of work properly that for motor car maintainers to perform, * * *". The claim was not made on behalf of the motor car maintainer, who should have done the job while inspecting the machine on October 17, 1960, but who instead sent a telegram that the machine should be sent to the shop for overhaul, the easy way out. Claim was instituted for a machinist in the Wellington roundhouse, a point where no such repairs are normally made. There is nothing in the rule which preserves this type of work exclusively to the motor car maintainer as claimed by the organization, and as they are trying to bring into being by seeking such a ruling from your Board.

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.

The Organization complains that the Carrier violated Rule 52 of the Controlling Agreement when it permitted two Maintenance of Way employes to make repairs on a Ballast Regulator near Alva, Oklahoma on the 18th of October, 1960.

It appears that, on account of traffic, the subject machine could not be used on October 18th, and further that it had been losing some of its power. On that date, the Roadway Equipment operator and his helper proceeded to remove the cylinder head from the engine, grind the valves and reassemble the components.

It also appears that the Motor Car Maintainer in the area had looked at the machine the day before, and had dispatched a message suggesting that the machine be sent to Albuquerque for overhaul, because of its loss of power and other malfunctions.

The claim before us is based on the fact that this was Machinists' work, and that by permitting these employes to perform it, Rule 52 was violated by the Carrier.

It is Carrier's contention that this was within the compass of "Minor Repairs" of Rule 49 (b) which could be accomplished by the operators of the equipment.

Rule 49 (b) reads as follows:

(b) Nothing in this Agreement shall be construed to prevent stationary engineers and firemen or engineers firemen and operators of roadway equipment and machines, pumpers and coal chute employes from making minor repairs to equipment they operate incidental to the continuous operation of stationary power plants, roadway equipment, pumping equipment or coal chute machinery."

The work in question is indisputably Machinists' work.

The question to be determined is whether or not the work consisted of "Minor Repairs" within the meaning of Rule 49(b).

There is no definition of "Minor Repairs" as used in the Rule either in the controlling agreement or elsewhere in this record.

Carrier relies on past practice, citing the letter of December 28, 1960 from the Assistant General Chairman to the General Manager, (pp 6 and 7 of Carrier's Submission). However, the past practice referred to in that letter was not condoned, but was rather, condemned by the Organization, and it is not the type of past practice which could carry weight in the resolution of this dispute.

Accordingly, we must exercise our judgment on the record before us in determining whether this was the type of "Minor Repairs" contemplated by Rule 49 (b).

We find that work here performed was of a major character and not at all what the Rule contemplates. Without attempting to add to the Agreement or Rule 49 (b), it appears to us that that Rule contemplated such non-technical minor repairs which any equipment operator would be able to perform in order to keep his machine functioning.

Carrier objects to the claim for 16 hours' additional compensation.

We are in agreement that this is an excessive number of hours, since the record indicates that the subject work could be accomplished by one Machinist within an eight hour period.

AWARD

Claim sustained. Claimant to be paid an additional eight hours' compensation at Machinist pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1963.