

Award No. 4433

Docket No. 4374

2-CofG-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement on August 28, 1961, when it assigned a shop laborer to perform work coming under Machinists Classification of Work Rules, on Locomotive No. 20.
2. That accordingly, Carrier be ordered to compensate Machinist M. L. Conner in the amount of four (4) hours pay at his pro rata rate.

EMPLOYES' STATEMENT OF FACTS: On August 28, 1961, the Central of Georgia Railway Company, hereinafter referred to as the carrier, assigned a shop laborer to adjust the brakes stem travel on Locomotive No. 20 in its Savannah, Georgia enginehouse or shop. Subsequently claim was filed in behalf of Machinist M. L. Conner, hereinafter referred to as the claimant, an off-duty machinist, employed at Savannah, Georgia, for four (4) hours at straight time, which is the minimum amount for a call.

This dispute has been handled with all officers of the carrier designated to handle such matters, including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustment. The agreement of September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is the position of the employees that the carrier violated the shop craft agreement, specifically Rules 52 and 54 reading as follows:

"RULE 52. Classification of Work.

Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes,

THE BURDEN OF PROOF RESTS SQUARELY UPON THE PETITIONERS.

It is elementary that one charging a violation of the agreement, must prove the charge. Mere unsupported allegations do **not** constitute proof. On this point, see the following awards:

Second Division Award No. 3576, Referee Lloyd H. Bailer:

"As the initiator of the claim, the Organization has not met the responsibility to make a presentation which, if accepted with respect to the theory advanced, will enable this Board to render a final and definitive award."

Also see **Second Division Awards** 3345, 3246, 3080, 2938, 2918, 2580, 2569, 2545, 2544, 2042, 1996, and others. Also see **Third Division Awards** 10323, 10201, 9963, 9961, 9783, 9788, 8838, 8768, 8430, 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, and many others. To date, **the organization has failed to prove that the agreement was violated.**

In view of all the facts and circumstances shown by the carrier in this ex parte submission, carrier respectfully requests the Board to deny, in its entirety, this baseless claim. The claim clearly is **not** supported by any rule, interpretation, or practice.

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.

On August 28, 1961, the Carrier assigned Machinist E. W. Dixon to perform machinist duties on Locomotive D-20 at Carrier's Enginehouse at Savannah, Georgia. The Carrier also assigned Shop Laborer Robert Stephens to assist Mr. Dixon and the former adjusted the locomotive's brakes.

The Organization contends that work performed by Laborer Stephens belongs to the Machinist's Craft and should have been given to Claimant, M. L. Conner, an off-duty Machinist.

The Carrier's position is that there is a jurisdictional question involved herein; that the work "of assisting a Machinist, **does not belong exclusively** to the craft and class of Machinists"; and that "Shop Laborers or helpers * * * have through the years assisted any and all mechanics".

First, the Board cannot sustain the Carrier's contention on the jurisdictional question and must, accordingly, dismiss it.

The record reveals that the work herein involved must be classified as repair work and not just the servicing of Diesel Locomotive D-20.

The record also reveals that Shop Laborer Stephens did not assist Machinist Dixon but performed the work of adjusting the locomotive's brakes without instructions or assistance from Mr. Dixon.

The Carrier, incidentally, cited no rule of the controlling Agreement which permits laborers to perform repair work on locomotives. However, Rule 52, the Machinists' Classification of Work Rule, which the Organization cited, supports the Organization's position, and gives the work herein involved exclusively to the Machinist Craft.

Although there is no record of a prior claim for such work now in dispute, the record does establish that it is traditional, at the Carrier's Savannah Shops, to use laborers to assist mechanics in the performance of their (Mechanics') work duties. The Carrier's work practices should be uniform—as well as in keeping with the controlling Agreement—and such practices should not vary from location to location.

Accordingly, we remand this dispute to the property for the requisite remedial action—namely, for the Carrier to discontinue the practice of using Shop Laborers in making locomotive repairs; and also that the practice of assisting mechanics shall be in accordance with the uniform practice prevailing on the Carrier's property.

AWARD

Part 1. Remanded to the parties as indicated in the findings.

Part 2. Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.