Award No. 4476
Docket No. 4109
2-CRI&P-BK-'64

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. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Blacksmiths)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement rules, the Carrier on or about August 25, 1960, improperly contracted out the repairing of truck No. 13104, No. 1 position out of diesel No. 1226, to General Motors Corporation.

2. That accordingly, the Carrier be ordered to additionally compensate Blacksmiths Frank C. Zora and Walter M. Henyan forty (40) hours each at their applicable rate of pay account the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the carrier, maintains a shop at Silvis, Illinois, where regular routine of diesel repairs are performed, including the repairs the blacksmith craft are assigned to make on damaged diesel trucks. Diesel No. 1226 was involved in a wreck whereby No. 1 and No. 2 trucks were damaged, No. 2 truck was repaired in the Silvis Shop by the blacksmiths, No. 1 truck No. 13104 was loaded in coal car No. 1365 on August 25, 1960 and shipped to General Motors Corp. to be repaired. The truck was returned to the Silvis Shop on or about November 1, 1960. When the truck was returned to the Silvis Shop it was viewed by the blacksmiths and found not to be properly repaired as indicated in the facts when claim was appealed to Mr. Mallery's office in letter dated November 21, 1960.

This dispute was handled in the regular manner prescribed by the agreement, and under date of November 21, 1960, the claim was appealed to the office of Mr. G. E. Mallery, vice president–personnel. On August 15, 1961, the general chairman, in an effort to settle the claim on the property, discussed the matter with Mr. Lesovsky, labor relations assistant, as shown in general chairman's letter. The procedure for the settlement of disputes on the property have all been exhausted, with the result that carrier has declined to make satisfactory adjustment.

Since the carrier did not have the necessary equipment to make the required repairs to truck No. 1 the truck was sent back to the factory where the necessary equipment was available to do the work. This is squarely in line with the provisions of the rule. Since the carrier did have the necessary equipment to make the required repairs to truck No. 2 the truck was repaired by our own forces. This too was squarely in line with the provisions of the rule.

Yet, the organization attempts to put across that since the carrier had scarcely-damaged truck No. 2 repaired by its forces — that constituted an admission that not having extensively-damaged truck No. 1 was a violation of the agreement. Nothing could be further from fact — the rule quoted herein speaks for itself.

Also the organization attempts to put across that repairs "identical" to the repairs made on truck No. 2 had been made by blacksmiths on previous occasions. However, this is only unsupported contention, not backed by proof, which the carrier denies. The carrier has, of course, in the past had varying degrees of damaged trucks repaired by its forces if its facilities were adequate but the carrier has also had extensively damaged trucks, beyond the capability of its facilities to repair, repaired by the factory and without claim or protest.

This case appears to be an attempt to make a complete nullity of the rule quoted herein which was bargained for in good faith and which by express terms simply perpetuates what has been the practice for years.

It would appear that the organization feels management judgment should be written off entirely — that there should be some sort of qualification, for example: The organization should be permitted to attempt any job and then upon realization that such cannot be done, the carrier then would be permitted to send the job to the factory and incur the double expense involved. Such has not been the practice, as now stipulated by rule, is not in any way practical and has no basis in logic or rule interpretation. The rule does not provide any such qualification, and the practice which produced the rule was devoid of any such qualification.

In this instance no member of the craft represented by the organization was injured and the claim is totally without merit. The additional basis for the claim seems to be that the carrier should have to call back furloughed men and if enough were called back the carrier then might have enough men to do manually what its machinery would not do. This concept also is neither required by rule, practice nor bottomed on logic.

There is absolutely no evidence of bad faith shown by the carrier here. It simply sent a diesel truck, which was beyond the capabilities of its facilities to repair, back to the factory for repairs — as the rule states.

We respectfully refer the board to awards 3635 and 3636 rendered by this division (and awards referred to in those awards) which deal with the same carrier and the same rule as quoted herein. The rule refers to "repairs, rebuilding, replacement or exchange." While Awards 3635 and 3636 dealt with "exchange", the same application would fall on "repairs" as they both are in the rule in the same sense, guided by the same intent, etc. This claim should 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 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.

Diesel No. 1226 was involved in a wreck which damaged trucks No. 1 and No. 2. No. 2 truck was repaired at Carrier's Silvis, Illinois shops by the Blacksmiths. No. 1 truck was shipped to a Division of General Motors Corporation for repairs.

The Organization contends that it should have had the work of repairing Truck No. 1 as well since this is Blacksmiths' work as evidenced by the controlling agreement and past practice of truck repairs at Silvis.

Carrier points to a Memorandum of Understanding (cf. pp. 2 and 3 of Carrier's submission) which reads in part as follows:

> "* * * This change does not affect work which is performed by employes of other departments and now covered by agreements with other organizations, nor change present practices as to handling of Maintenance of Equipment work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange."

It is Carrier's contention that it did not have the necessary equipment to make the repairs on Truck No. 1, and that its action in sending this truck to the factory was within the provisions of the Memorandum above quoted.

The Organization states that the necessary equipment was available at Silvis, and Carrier sent the truck to the factory to avoid calling back furloughed blacksmiths to do the work.

It is not disputed that Truck No. 1 was more severely damaged than Truck No. 2.

The resolution of the factual dispute brings us to a consideration of the Memorandum and a determination of whether the circumstances warranted the exercise of managerial judgment in sending this truck to the factory.

In the instant dispute management made two decisions; one to have the work performed on Truck No. 2 at Silvis, and second, to send Truck No. 1 to the factory. An examination of the record as made fails to convince us that such Carrier determinations constituted a violation of the above quoted Memorandum of Understanding.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1964.