

Award No. 4547

Docket No. 4505

2-SP(PL)-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement the Carrier's use of Water Service Mechanics—represented by Brotherhood of Maintenance of Way Employees—eight hours each date, May 9, 10, 11, 14 and 15, 1962, including the use of a Machinist employee, identified as Mr. W. S. Harter of an outside firm identified as the Chicago Pneumatic Tool Company, San Francisco, California, on the dates of May 21, 22 and 23, 1962 and again on the dates of October 30, 31 and November 1-2, 1962, to assemble, install and adjust for operation Chicago Pneumatic Air Compressor No. 52043 at Carrier's Dallas Street Car Shop Light Repair Track Facility, El Paso, Texas, was improper, in violation of the collective bargaining contract.

2—That accordingly, the Carrier be ordered to additionally compensate Machinists A. L. Rodriguez and H. P. Sanders (hereinafter referred to as claimants), in the amount of eight (8) hours each at the pro rata rate of pay, for each date of May 9, 10, 11, 14 and 15, 1962, account Carrier depriving claimants and other employees of like classification subject to all terms of the parties contract the right to perform machinists' work coming within the Scope of said contract, when the work referred to hereinabove was performed by employees represented by the aforementioned Organization, working with and under the instruction of above referred to employee machinist of the outside firm identified hereinabove, none of whom are subject to any provisions of the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: During the month of April, 1962 claimants here involved completely dismantled and removed Air Compressor #52043 from its foundation in carrier's power plant at El Paso, Texas, and placed same on a flat car for moving to carrier's relocated car Repair Shop, identified as the Dallas Street car shop light repair track facility.

The removal of this air compressor from carrier's power plant and installation at the aforementioned facility, did not remove it from the area recognized as coming within the jurisdiction of the "Motive Power & Car

ganization in the handling of the instant case on the property, and the organization has been fully aware of such practices which have been in effect for many years without protest.

CONCLUSION: Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it 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.

The two Claimants are machinists who are employed at the Carrier's El Paso, Texas Shops. In April, 1962, they dismantled a Chicago Pneumatic Air Compressor #52043, located in the Power Plant, preparatory to its being moved to the Dallas Street Car Shop Light Repair Track Facility located approximately one-quarter mile away. The employees allege that on May 9, 10, 11, 14 and 15, 1962, they were deprived of the right to re-assemble Air Compressor #52043 because Water Service Department mechanics on the Maintenance of Way Department performed the work. They also allege that this work was properly within the Motive Power and Car Department and request that each be paid 8 hours at the pro rata rate for each of the days mentioned.

The record discloses that the Carrier was expanding its Light Repair Track; that it previously had used Maintenance of Way employees to install, repair and service 2 Worthington air compressors of 284 CFM capacity at the same location; that Air Compressor #52043 had a capacity of 2200 CFM and it had been used in the Motive Power and Car Departments and would likewise, after its move, be used at least to the same extent by the same Departments.

The Carrier first raises a procedural defense to the employees' claims by stating that the claims found in the Employees' submission are not the same as those which were discussed and presented on the property. We are of the opinion that the claims properly presented on the property are set forth in the initial paragraph above and that while the discussion on the property seemingly encompassed much, if not all, of the facts set forth in paragraphs (1) and (2) of the Claim of Employees the record does not disclose that any additional and definitive claims were made by the employees to the Carrier. We are not called upon to, and do not, rule upon Carrier's procedural point since we find that the claims were not enlarged.

Rule 57 of the Agreement between the Employees and the Carrier, and one of the rules cited by them to support their positions, provides:

"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, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building (in shops), shafting and other shop machinery; ratchet and other skilled drilling, reaming and tapping; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring; engine inspecting; air equipment, lubricator and

injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; shipyard machinists' work; and all other work generally recognized as machinists' work."

In the absence of some extenuating circumstances that would prevent its application we believe that the above quoted rule covers the work involved herein since the Car Repair Facility was to be included as coming within the Motive Power and Car Departments of the Carrier and Air Compressor #52043 was needed and was to be used to augment the two smaller compressors because of the enlargement of that Facility.

The Carrier's argument that the quoted rule does not apply is not persuasive. Its attempts to support its position by showing that other classes of employees have historically performed analogous work on similar air compressors at the same location. The work performed on the 2200 CFM capacity compressor, #52043, has been described to us by the Carrier as being very technical, to the point of requiring special tools and supervision by an expert from the manufacturer; no such statement is made concerning the work performed on the mentioned Worthington air compressors. We do not find that the record discloses that the work would be analogous or that the compressors are similar. Moreover the older practices in effect at the smaller Facility cannot be given the import sought by the Carrier in its argument since that Facility was in the process of being increased in size as well as having its method of operation changed; the increase and change was so substantial that the past practice of Water Service Department mechanics installing, repairing and servicing small air compressors, not within the Motive Power and Car Departments, cannot be likened to the facts presented to us in the instant case.

From the record before us we believe that the Carrier erroneously assigned Water Service Department mechanics to re-assemble Air Compressor #52043. Since the employees admit that some of work claimed involved building the foundation and making electrical connections on the dates of May 9, 10, 11, 14 and 15, 1962, and also admit that this work does not fall within the scope of Rule 57, it is necessary that we instruct the parties to determine the number of hours on the dates mentioned that Water Service Department mechanics assembled and/or installed Air Compressor #52043, excluding the excepted work mentioned above because the record does not disclose this information. We are of the opinion that the Claimants were improperly denied the opportunity to perform the work on the dates mentioned and that they should be compensated at the pro rata rate for the work performed by the Water Service Department employees.

AWARD

Claim sustained in accordance with the above findings and instruction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1964.