

Award No. 4556
Docket No. 4548
2-CMStP&P-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. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the provisions of the current agreement were violated when the Carrier contracted out the repair work to the following equipment:

July 6, 1962 Waukesha Ice Machine	# 4325
July 6, 1962 Waukesha Engine Generator	# 40923
July 11, 1962 Dome Car Enginator	# 42806
July 12, 1962 Waukesha Ice Machine	# 6965
July 12, 1962 Waukesha Ice Engine	# 6951

2. That machinists H. M. Drew and R. Genetske be paid straight time wages for 165 hours because of being deprived of their contractual rights to perform the work in question.

3. That the claim be allowed in its entirety because of the fact that the first three (3) carrier officers designated to handle claims were in violation of Article V of the August 21, 1954 Agreement.

EMPLOYEES' STATEMENT OF FACTS: The carrier contracted with the Pullman Company to overhaul and repair the equipment mentioned in the employes' claim. This work was sent to the Pullman Company during a period of July 6, 1962 to July 15, 1962, which closely followed and embraced a period of time during which the carrier's shops at Milwaukee were shut down. The carrier maintains a shop in Milwaukee whose primary function is to overhaul and repair the equipment under discussion. Immediately prior to contracting out this work the carrier furloughed the employes at Milwaukee, witness their Notice of April 9, 1962.

Each of the pieces of equipment here involved are powered by an internal combustion engine, and when they were overhauled the following work was performed. The cylinders were honed; new piston rings fitted and applied;

It is significant that from July 11 through July 29, 1962 claimants Drew and Genetske were on vacation and, therefore, were unavailable for service during that period.

The carrier submits that it is readily apparent that by the instant claims the employes are attempting to secure through the medium of a board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held by the Second Division, as well as by the other three divisions and the various Special Boards of Adjustment, that your board is not empowered to write new rules or to write new provisions into existing rules.

In view of the foregoing the carrier submits that the instant claims are not supported by schedule rules or past practice and the carrier respectfully requests that the claims 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.

The two claimants are machinists employed at Carrier's Milwaukee, Wisconsin Locomotive and Car Shops. On April 9, 1962, all the shop employes in Milwaukee received notice of the following facts:

- (1) The shops would close on June 29 and the employes furloughed;
- (2) The facilities would remain closed until August, 1962; and
- (3) Employes laid off and who were entitled to a vacation would be granted group vacations beginning July 9, 1962.

The claimants allege that the Carrier contracted out repair work on equipment from its Western Avenue, Chicago, Illinois, shops to the Pullman Company, that the work should have been done by them and for this work the claimants ask for 165 hours' pay at the pro rata rate. The carrier denies that two of the five pieces of equipment were repaired at all and further states that with one exception, the equipment was repaired while claimants were on vacation.

The employes state that had the Milwaukee Shops not been closed, the repair work in question would have and should have been sent to their shops. The Carrier denies this statement and lists many instances, both prior and subsequent to the dates of the instant claim, where essentially the same work was contracted out from the Western Avenue Shops.

The employes additionally ask that their claim be allowed in its entirety because of a violation of Article V of the August 21, 1954, Agreement; they allege that this violation was caused by three Carrier officials failing to state the reasons for not allowing the claims. Exhibits show that each of the officials said essentially the following: "The claim is declined due to it not being

supported by any scheduled rule." Numerous prior awards of all Divisions of this Board have determined that the requirements of Article V are met by such language as we have quoted above, therefore, we must deny the employes' request for allowing the claim on the procedural point presented and we therefore proceed to a determination of the claim on its merits.

The employes have presented no specific rule or collateral agreement that grants to employes at the Milwaukee Shops work arising from the Western Avenue Shops located in Chicago; neither do they indicate to us how their seniority rights have been affected. A mere assertion by the employes that the work would have or should have been sent to their shops if those shops had not been closed, when such fact is denied by the Carrier who offers substantial contra evidence, is not sufficient proof to us to warrant an affirmative award.

It cannot be refuted that the burden of proof rests upon the party seeking relief and as we have stated above the claimants here have failed to meet that burden and their claims must be denied.

AWARD

Claims (1), (2) and (3) denied in accordance with the above findings.

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.