

Award No. 4583

Docket No. 4392

2-GN-CM-'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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Carmen were improperly used to repair material to be used on freight car equipment.

2. That accordingly, the Carrier be ordered to compensate Carmen Clarence Bahe for an additional 16 hours at the straight time rate of pay because of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains a car building shop at St. Cloud, Minnesota. Carmen Clarence Bahe, hereinafter referred to as the claimant, is employed at these facilities and works in the air shop facilities at this location.

On the date of May 23, 1961, fifty (50) angle cocks were shipped from St. Cloud Shops to Koehler Products Inc., for repairs.

The amount of time required to make the necessary repairs to the fifty (50) angle cocks by a competent, experienced air man was considered to be 16 hours and on May 30, & 31, 1961 time claims were entered for the claimant in that amount.

This dispute was handled with all carrier officials designated to handle disputes, all of whom declined to adjust it.

The agreement effective September, 1949, as subsequently amended, is controlling:

POSITION OF EMPLOYEES: It is respectfully submitted that Rule 83 of the current agreement, captioned "Classification of Work" and reading in pertinent part:

In accordance with his ideas machinist employes constructed the necessary cut-off bars and timing apparatus. He experimented with the old washing machine and these parts and was able to devise a time-saving piece of equipment.

The claim is that he thereby performed machinists' work, which under Rule 52 consisted of 'laying out, fitting, adjusting * * * of metals used in building, assembling, maintaining, * * * and installing * * * tools and machinery * * *.'

It is apparent that this experimental or inventive work is not of the nature usually performed by railroad machinists, and the question is whether past practice has considered it as an infringement of their jurisdiction."

It is not unusual for the carrier to cooperate with the Association of American Railroads or with equipment manufacturers in the development of new or improved equipment. The donation of used materials and the testing of the modifications by the railway company under actual operating conditions contributes greatly to the value of the research and encourages such developments. The absurd claims involved in this case will only serve to discourage participation in such research projects. The modifications involved in the instant case could not and would not have been done if the carrier had demanded that they be made by the claimant. Rule 83 lends no support to the organization's claim, as the Board said in Award No. 2377, *Electrical Workers v. Southern*, Referee Edward F. Carter:

"In connection with the above findings we desire to point out that in the making of a collective agreement with the Electrical Workers it was not contemplated that carrier would thereby be restrained in the general management of its business in the ordinary manner. The agreement was intended as a classification of work among the various crafts and not an extension of the existing scope of the work into fields not theretofore contemplated. It is only when the carrier pursues an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform that a basis for claim exists. We think the rebuilding and modernizing of old traction motors with the accompanying warranties, under the circumstances set forth herein and under the findings made, are not in violation of the classification of work rule of the Electricians' Agreement."

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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 Organization contends that the Carrier violated Rule 83 of the controlling Labor Agreement on May 23, 1961, when it sent 50 angle cocks to the Koehler Products Company, West Alexandria, Ohio, for repairs.

The Organization further contends that the angle cocks could have been repaired at the Carrier's Car Building Shop at St. Cloud, Minnesota.

The Carrier, on the other hand, claims that the angle cocks were sent as a test shipment to the Koehler Products Company for experimental and modification purposes.

The Carrier also claimed that it did not violate the controlling Labor Agreement because "There is nothing in the current schedule agreement that would indicate * * * that the carrier cannot send equipment outside of the railroad for modification and repairs;"

The pertinent part of Rule 83, as set forth by the Organization, is as follows:

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, * * * and all other work generally recognized as carmen's work."

The record on the property indicates that the angle cocks were not sent to the Koehler Products Company for repairs but for test and modification purposes — as evidenced by the following language of the Carrier's Chief Mechanical Officer:

"In this specific case these 50 angle cocks were shipped for modification to the Koehler Products, Inc., Alexandria, Ohio. This is a test shipment to have these angle cocks modified, which is an entirely new modification as far as angle cocks are concerned * * *

These angle cocks require special machining and to our knowledge this is the only company that is doing this type of modification, and these angle cocks are only being obtained on a test basis for the A.A.R."

The record also indicates that none of the angle cocks returned to the Carrier was serviceable and that all of them were scrapped.

This Board is convinced that the facts set forth above amply support the Carrier's action and make a denial award mandatory.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.