

Award No. 5031

Docket No. 4915

2-KCS-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO 3, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Carrier sub-contracted the removal, replacement and adjustment of six (6) shop ventilating fans located in the Diesel Shop at Shreveport, La.
2. The Carrier be ordered to additionally compensate Machinist W. A. Morris 24 hours pay at the prevailing rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains repair shops at Shreveport, Louisiana. At this repair point, the carrier employs skilled craftsmen of the various trades who are covered by the collective agreement August 1, 1945. Among those skilled craftsmen, the carrier employs Machinist W. H. Morris, hereinafter called the claimant, to perform, among other things, the work involved in this dispute.

On March 9, 1964, an outsider, who operates a machine repair shop in Shreveport, La., was permitted to send three of his own employes into KCS diesel shop at Shreveport, where the claimant and other skilled craftsmen are employed, to dismantle, reassemble and adjust six (6) shop ventilating fans. The total time is arrived at by the fact that in every instance prior to March 9, 1964, these fans were taken down and re-installed by Machinist W. A. Morris, encompassing approximately four (4) hours to do the work on each fan. There being six fans involved in this violation, the total machinist's work claimed herein is 24 hours.

The facts are that this uptown Shreveport Contractors sent his employes into the shop, borrowed the KCS equipment, including scaffolds and block and tackle, all of which were used by the claimant in the past in the performance of this machinist's work, removed the bolts and cap screws from the base and mountings, took the fans down, removed them from the property to some outside location, exchanged the motors, scraped gum from blades, returned them to shop where they were reassembled to their mountings with bolts and cap screws and adjusted them for proper pitch.

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.

Petitioner's complaint is that Carrier breached the applicable Agreement by using an independent contractor rather than Claimant, a machinist, to perform machinists work. The work in question, according to Petitioner, consists in dismantling, reassembling and adjusting large ventilator fans that are located in the top of the diesel building.

Rule 46 classifies the work that belongs to machinists. It reads as follows:

"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 for repairs, and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, wheel, axle and tire turning and boring; engine inspecting; air equipment; lubricators, injectors and breaking and bolting 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, and turning head or milling apparatus; and all other work generally recognized as machinists' work, and many connect and disconnect any wiring, coupling or pipe connections, on locomotives and machinery in making running repairs."

The fans in question are not "shop machinery" and are not expressly referred to in Rule 46. The only portion of that provision that could reasonably cover the disputed work is the phrase, "all other work generally recognized as machinists' work." Where a claim must rely upon vague general language of this type, it is incumbent upon Petitioner to establish by clear and convincing evidence that the work of dismantling, reassembling and adjusting large ventilator fans is generally recognized as machinists work.

In support of the claim, Petitioner has presented brief statements by eight machinists. Each is dated November 10, 1964, and follows substantially the same general form. All state that the work in controversy has always been performed by machinists in this shop ever since it was constructed in 1956 and that Claimant has performed that work.

We have given due weight to this evidence and find that it is not sufficiently specific and persuasive to establish that the work belongs exclusively to machinists by reason of past practice or other wise. In our opinion, neither the Agreement nor the evidence substantiates the claim and it will be denied.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of January, 1967.

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