

Award No. 5052

Docket No. 4873

2-HBL-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Machinists)**

HARBOR BELT LINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1 - That under the current agreement the Carrier's diversion of all machinists' work to its respective member lines in connection with Federal Inspections of Diesel Locomotives—monthly, quarterly and semi-annual inspections—all of which had been performed by Harbor Belt Line employes on Harbor Belt Line (hereinafter for brevity referred to as Belt Line) assigned locomotives prior to May, 1964 consistent with applicable terms of the current agreement, including Section 30 of the Contract For Unified Operations of Railroad Facilities at Los Angeles Harbor, was improper, in violation of the collective bargaining contract, including the aforementioned contract.

2 - That accordingly, the Carrier be ordered to compensate Machinists R. F. Callender and H. R. Martinez (hereinafter referred to as claimants), in the amount of eight (8) hours compensation each at the pro rata rate, for each and every locomotive that Carrier sent to its respective member lines for Federal Inspections referred to above, commencing with the date of June 5, 1964, and continuous thereafter to date violation cited hereinabove is discontinued.

EMPLOYES' STATEMENT OF FACTS: The record establishes that it has been a consistent accepted practice and recognized contractual right since effective date of the current agreement, August 1, 1939, for machinists and employes of other classifications subject to the terms of said agreement employed by the carrier—Harbor Belt Line Railroad—to perform all federal inspections referred to above, including repairs and maintenance work on all locomotives assigned to Belt Line operations. There is no evidence of any dispute in the record regarding this fact.

has been in existence and no material change has been made in that practice.

6. The amount of requested compensation set forth in Item 2 of the statement of claim is not supported by any rule or rules of the collective agreement, past practices, awards of the National Railroad Adjustment Board, or the law of the land.

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 claim as submitted on the property on July 28, 1964 was "on behalf Machinists R. F. Callender and H. R. Martinez (hereinafter referred to as claimants) for eight (8) hours additional compensation each at the pro rata rate for each and every Harbor Belt Line assigned locomotive that Carrier sends to the respective member lines for Federal Inspections — monthly, quarterly and semi-annual inspections — all of which have been performed by Belt Line employes on Belt Line assigned locomotives prior to May, 1964 consistent with the current agreement, * * *.

"The records reflect that on dates indicated below the Carrier sent the Belt Line assigned locomotives identified below to its member lines for monthly and semi-annual inspections:

June 8, 1964	Sfe.	2369	To: Sfe Shops, Los Angeles
June 11, 1964	Sfe.	2388	To: Sfe Shops, Los Angeles
June 14, 1964	S.P.	1313	To: SP Shops, Los Angeles
June 18, 1964	Sfe.	2384	To: Sfe Shops, Los Angeles
June 20, 1964	U.P.	1008	To: U.P. Shops, Los Angeles
June 26, 1964	S.P.	1315	To: S.P. Shops, Los Angeles

Claim as here presented is a continuing claim * * *.

Consistent with above agreement provisions and record of Carrier's diversion of work to member lines, claimants are accordingly entitled to the additional compensation claimed commencing with the date of June 8, 1964 and for each date thereafter listed above, including each date subsequent to June 26, 1964 on which Carrier elects to divert maintenance and Federal Inspection of Belt Line assigned locomotives to member lines, in violation of * * * the controlling agreement, * * *."

During the handling on the property additional instances were asserted as follows:

"July 4, 1964	Engine No. 2328
July 9, 1964	Engine No. 2376
July 14, 1964	S.P. No. 1313 * * *
July 16, 1964	Engine No. 1049
July 17, 1964	SFE No. 2384 * * *
July 26, 1964	S.P. No. 1315
Aug. 1, 1964	Engine No. 2335"

The appeal of August 10, 1964 specified all the above incidents as violations.

In the General Chairman's letter of September 28, 1964, to the General Manager the date of each of these alleged violations, without exception, was advanced from one to three days, the first change to June 5, preceding by three days the beginning date of June 8 specified in the original claim, but the owners of the respective locomotives were left as above stated, four in the second list being stated by number only. In the claim as filed here the new dates are shown but the original references to engine numbers and owners are retained.

The Carrier therefore objects that the claim presented here differs from that initiated on the property; however, it will not be necessary to consider that matter.

The Carrier owns no locomotives or other equipment. It is a joint operating agency for the unified operation of railroad facilities at Los Angeles Harbor on behalf of the Board of Harbor Commissioners of the City of Los Angeles, the Pacific Electric Railway Company, the Southern Pacific Company, the Union Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company. The four railroads supply Carrier's locomotives and other equipment on a rental basis.

It is alleged by the Carrier, and not controverted in the record as follows:

"For many years the Harbor Belt Line has operated as an agency for the member lines and the Board of Harbor Commissioners of the City of Los Angeles. Locomotives have been assigned to the Belt Line for varying periods of time in order to comply with the requirements of Section 30 of the Contract for Unified Operations. Throughout these many years, at the discretion of the member lines, locomotives have been withdrawn and other locomotives assigned to Belt Line service according to the desires and decisions of the member lines managements. Also, throughout these years a locomotive, when assigned to the Belt Line, has been deemed and treated as forming a part of the Belt Line facilities. Maintenance and repair has been performed by Belt Line mechanics in that locomotives have been, during such period, considered within the jurisdiction of the Mechanical Department of the Belt Line, as contemplated by the Scope Rule of the collective agreement.

The Belt Line maintains a very small facility for mechanical repairs and maintenance. It does not have the equipment to perform any repairs of medium or major consequence. Throughout the years any locomotive assigned to the Belt Line which required medium or major repairs has been returned to the member line and a substitute locomotive assigned to the Belt Line as a replacement.

Insofar as federal inspections are concerned, there has never been a pattern of uniformity, some portions of the inspections being accomplished by Belt Line personnel where inspection may be due at the time the locomotive was assigned to Belt Line service and other portions being accomplished by member line personnel on home road property when the locomotive was not assigned to Belt Line service.

On a more specific basis, an entirely different policy is maintained by each of the member lines with respect to semi-annual inspections. As illustration, the Union Pacific never permitted Belt Line personnel to perform this inspection. When inspection was due the locomotive would be recalled by the Union Pacific and the inspection performed by Union Pacific forces with a replacement locomotive being sent to the Belt Line. Over the period of years, the Southern Pacific and Santa Fe have varied their policy to some extent, ranging from a policy of permitting Belt Line personnel to perform semi-annual inspections when locomotives were assigned to the Belt Line and in other instances performing such inspections by their own forces on home road property by recalling the assigned locomotive from the Belt Line and replacing the recalled locomotive with a different unit.

At page 5 of this submission, the carrier stated in anticipation that the employees would attempt to convey to this Board that switch engines have been returned to member lines solely for the purpose of inspecting and repairing and then immediately returned to Belt Line service.

Looking at Item 1 of the Statement of Claim it would appear the employees are attempting to convey the thought that practices were entirely changed effective May, 1964. In both cases the Board should understand that the contentions are entirely in error. While there is some variation, of course, in locomotive replacement, the carrier has prepared and attaches hereto as Exhibit 'P' statement showing locomotive turnover data for the period June 1, 1963 through June 14, 1965, which dates represent approximately one year prior and subsequent to May, 1964. From this exhibit, it will be readily observed that the replacement practice is not new and any policy change in May, 1964 would not have the effect of changing the practice which had been in effect for many years."

Exhibit P confirms the thirteen locomotive changes specified as of the amended dates shown in the claim as filed here, but except as to UP 1008 lists as owner of each locomotive a different railroad from that stated in the claim. Four are from the Pacific Electric, seven from the AT&SF and two from the UP. The Pacific Electric locomotives came back in twelve, seventeen, thirteen and fifty-one days respectively. Of the seven Santa Fe

locomotives, six came back in 35, 5, 85, 69, 130 and 158 days, respectively; the seventh did not come back during the ensuing period of about one year, ending on June 14, 1965, nor did either of the UP locomotives. Thus the record fails to show any general practice for the return or recall of locomotives only briefly for federal inspections. It also fails to indicate a change of practice as of May or June, 1964.

The record shows that while the locomotives are in use by the carrier they are within its jurisdiction and therefore subject to the Agreement, but that the Carrier has no control over the duration of its possession, and that the substitutions and changes complained of are controlled by the railroads to which they belong.

For the reasons above stated the claim that the Carrier has diverted federal inspection work from its machinists cannot be sustained.

AWARD

Claim denied.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.