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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6335
Docket No. 6158
2-SLSW-MA-'72

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

Parties to Dispute: (System Federation No. 45, Railway Employes' Department, A. F. of L. - C. I. O. (Machinists)
(St. Louis Southwestern Railway Company

Dispute: Claim of Employes:

1. That Carrier violated the controlling Agreement when it improperly assigned Carmen to repair and maintain a fleet of Motor Scooters at Pine Bluff Terminal.

2. That Carrier be ordered to compensate Machinist C. W. Borecky for eight (8) hours, at the pro-rata rate, for each day Carmen have been improperly assigned such dispute work assignment, beginning with June 10, 1970 and continuing until such dispute work is reassigned to the Machinist.

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 Carrier in this case has purchased a fleet of utility motor scooter vehicles powered by gasoline engines. These vehicles are used by various employes to move from one work area to another, transport material, inspect, and for other time-saving purposes. This equipment first was received at East St. Louis where machinists performed the routine servicing and maintenance until all vehicles were placed in service in 1967. Since this time carmen have performed service and maintenance functions. Similar vehicles were acquired for the Pine Bluff, Arkansas location in 1969 and later for the Shreveport, Louisiana location. In all of these locations the carmen, the using craft, have performed service and maintenance functions.

Machinists have objected to this allocation of work for some time. In 1967 and 1968 employes filed a claim at East St. Louis, and they were denied by the Carrier and never ruled on by this Board. In 1970 the employes in this case filed the present claim contending that repair and maintenance on motor scooter vehicles belonged to the Machinists.

The Carrier resists this claim on the procedural grounds that it is merely the refiling of previous claims and therefore is barred under the time limit provisions of Article V of the August 21, 1954 Agreement. The Carrier also cites a number of prior awards to support its case. See Second Division Awards: 4924; 4554; 3234; 2177. A careful reading of these awards establishes the principle that a subsequent claim which is identical to a previous claim will be barred. In these awards the claims were identical because they involved the same employes and the same subject matter. Article V of the 1954 Agreement adopts the same principle. It provides in Section 1(c):

> "All claims. . . involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative. . ." (Emphasis added)

Under this provision a claim is barred if the employe claimant or his representative does not take action within the prescribed time limit.

The Carrier's contention that this claim is barred confuses the principle established in prior awards and Article V 1(c) and the precedence value of prior decisions. The running of the time limit under Article V bars any further action by claimant(s) in that case. The decision by the highest officer on the property has precedent value for subsequent cases involving the same or similar contract interpretation questions. The resolution of such questions establishes precedent, but it does not prevent other employes from contending that their contract rights were violated. Admittedly in this case, the contract question and the subject matter in the dispute are identical with former claims. The claimant, however, is different. His rights under applicable agreements should be determined in his claim, not another employe's case. The earlier decision of the highest officer on the property merely establishes practice and precedent. Under Article V (a) and (b), claims that are allowed to lapse before they reach the highest officer on the property "shall not be considered as a precedent or waiver of the contentions of the Carrier (or employes) as to other similar claims or grievances." This Board, therefore, holds that this claim is not barred by previous claims involving different claimants.

A Carrier might be concerend about a multiplicity of claims raising similar questions. Once practices and precedents have been established, however, employees and their representatives are not likely to pursue fruitless and spurious claims.

The Claimant in this case contends that the Carrier violated Rule 43, Classification of Work, when Carmen were assigned the maintenance and repair of motor scooter vehicles. In part Rule 43 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), . . . and other shop machinery . . . and all other work generally recognized as machinists' work on this carrier." (Emphasis added)

Work classification rules typically define the scope of a craft's jurisdiction in terms of the skilled functions performed and the equipment on which these functions are performed. For work to fall within the exclusive jurisdiction of a craft, it must be included in the expressly described functions and equipment allocated to the craft. Under Rule 43 the skilled functions are "laying out, fitting, adjusting, shaping, boring, slotting, milling and griding of metals," while the equipment category is "engines (operated by steam or other power)."

The gasoline powered motor scooters involved in this case satisfy the equipment category test. The term "engine" connotes "any machine by which physical power is applied to produce a physical effect." See Webster's New Collegiate Dictionary, 1958, p. 273. The ordinary and plain meaning of the term "engine" includes gasoline engines.

The claimant, however, has not introduced any evidence to show that the work claimed in this case satisfies the functions test. No evidence was submitted to show that "laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals" was performed on these gasoline engines. The mere assertion that machinists are entitled to all "maintainance and repair" is not supported by the terms and conditions of Rule 43. This claim, therefore, must be denied. See Second Division Awards 1110, 2544, 3170, 3387, 4259 for similar circumstances, but different rationale.

A W A R D

Claim denied in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 7th day of July, 1972.

DISSENT TO AWARD NO. 6335, DOCKET NO. 6158

The referee in Award No. 6335, Docket No. 6158, along with the majority in this instant award, caused gross violence to the Machinist Classification of Work Rule No. 43 when they made such absurd interpretation of the rule by stating:

> "The claimant, however, has not introduced any evidence to show that the work claimed in this case satisfies the functions test. No evidence was submitted to show that 'laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals' was performed on these gasoline engines. The mere assertion that machinists are entitled to all 'maintenance and repair' is not supported by the terms and conditions of Rule 43. * * *"

Rule 43 is clear and reads as follows:

> "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, scale work (when brought to the shop), pneumatic and hydraulic tools and machinery, shafting and other shop machinery; ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grading, axle truing, axle, wheel, and tire turning * * *."
>
> (Emphasis added)

We believe the referee, for reasons of his own, was grasping vainly for an excuse to deny this case irrespective of common sense, knowledge of the railroad industry, and to say the very least, is lacking in proper grammatical construction when placing in historical railroad jargon "internal combustion engine" whether it be diesel, gasoline, or powered by other sources of energy, is still an engine within the meaning, intent and purpose of the contract language of this industry.

This record is replete with substantive evidence such as (R., p. 6), "For the repair and maintenance of these machines a special shop was built (by carrier) and equipped and staffed by Carmen." This is admitted by the parties that gasoline engines are being repaired. Certainly common sense will show that the dismantling, assembling and maintenance of gasoline engines fall within the historical intent of this particular rule. The referee has accomplished nothing other here than to add further chaos to the industry.

We dissent.

Robert E. Stenzinger

D. S. Anderson

E. J. Haesaert

W. O. Hearn

E. J. McDermott