

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) That the Carrier established a heavy locomotive repair (dead work) program at Radnor, Tennessee and scheduled it to operate on a seven-day week, rather than on a Monday through Friday basis as provided by the Agreement, and, by long established practices.
- (b) Claim in behalf of Machinists W. C. Stevens, G. L. Ramsey, L. W. Minton, D. E. Clement, R. E. Jackson, Leo Banks, J. W. Western, K. E. Thacker, Joe Brown, W. M. Brindley, R. Lecomte, G. M. Jones, W. E. Anderton, E. G. Brindley, R. L. O'Neal, G. E. Green, R. W. O'Leary, J. P. Burns, J. B. Lankford, J. P. Medlin, D. O. Pope, M. O. Medcalf, E. H. Thompson, G. L. Tatum, C. T. Wilson, D. S. Adams, C. D. Gambill, J. A. Tripp, R. B. Dozier, J. H. Thompson, C. A. Vogeli, S. J. Sloan, B. R. Bomar, and J. C. Jakes, in the amounts as set forth hereinafter.
- (c) The claim was originally filed as a "continuing" claim and amounted to a total of eighty-eight (88) hours at penalty rate for the period November 24, 1973 through January 6, 1974, a period of seven weeks. The violation continued for forty-one weeks, or until October 20, 1974, for an additional five hundred twenty eight (528) hours at penalty rate, at which time the Carrier discontinued the seven day operation and rescheduled it on a Monday through Friday basis. Thus, the total remedy sought is 616 hours of pay at time and one half rate to be divided equally among the Claimants named above.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Review of the record and the positions of the parties provides the following undisputed facts: Carrier operates a locomotive repair shop at Radnor, Tennessee on a seven-day basis. In November 1973 Carrier initiated a "re-seal" program for diesel locomotives. Re-seal work consists of changing over cylinders, bearings, pistons, water pumps, and other heavy repair work as needed. On or about November 24, 1973 Carrier scheduled this reseal work on a seven-day basis and worked it as such until on or about October 20, 1974 when Carrier, in connection with top-level handling of the instant claim, redeployed the work force at Radnor to provide for a Monday - Friday reseal program. The details of the redeployment to a five-day reseal program in October 1974 are best shown by the exchange of correspondence between the Organizations' General Chairman and Carrier's Assistant Vice President, Personnel and Labor Relations reading in pertinent parts as follows:

"In discussing the matter in conference on the 14th, it was still our position that there is no agreement provision which restricts the re-seal operation to five days per week. However, in a spirit of cooperation to resolve the matter, we agreed to rearrange the forces at Radnor to provide for a Monday - Friday re-seal program with your concurrence that the employees assigned to light-running repairs, when time will permit, can be required to work on re-seal jobs on Saturdays and Sundays. It was your thought that such an arrangement of having the light-running repair employees work on the re-seal work would be in violation of the overtime agreement, but you were willing to try this arrangement to see what the results would be.

While arrangements are being made to rearrange the forces, it may be that such will not meet the needs of the service, and it may be necessary to revert to the seven-day operation. Furthermore, as explained to you in the conference, this action on our part should not be taken in any manner to indicate that we have changed our opinion as to an agreement violation, for we have not. Our action is only to provide for harmonious relations and try to resolve the problem.

It was hoped that in view of the circumstances involved that you could see your way clear to withdraw the claim during the conference; however, since it was not withdrawn, it must remain as declined."

* * * * *

"We, too, are very desirous of cooperating with the Carrier in trying to resolve our differences and provide a more efficient and productive operation. However, it is still our position that the performance of dead work repairs on a seven day week basis is in violation of the Agreement. Therefore, we have no alternative but to continue handling the dispute as provided by the Railway Labor Act.

"With respect to our pledge not to file claims when (occasionally) running repair employees are sent in to do re-seal work -- this pledge will, of course, be honored."

In order to effectuate the seven-day reseal program in November 1973 Carrier had created four (4) machinist positions, two (2) were established as Monday through Friday with Saturday and Sunday rest days, and two (2) other positions, one of which was Friday through Tuesday with Wednesday and Thursday rest days and the other Wednesday through Sunday with Monday and Tuesday rest days. The reseal work thus was performed seven days each week during the period November 24, 1973 to October 20, 1974. Prior to establishment of this program and schedule Carrier discussed same with the Local Chairman who protested that by past practice reseal work only could be performed Monday through Fridays, but the seven day operation was initiated nonetheless.

As we view the record, including the myriad Awards provided by the parties relative to the 40 Hour Week Rule and seven-day position, the Organization has failed to make out a claim for a violation of Rule 1. We are persuaded that Carrier has demonstrated that Radnor has been operated for some years on a seven-day basis and that there was an "operational requirement" to do the reseal work on a seven day basis. There is some evidence for the Organization that reseal programs were done on a five-day basis at Radnor in the past. But this does not rise to the dignity of binding past practice absent clear evidence that such was mutual, uniform and established methodology, thus indicating a tacit agreement of the parties. Such a clear showing is not made on the record.

The claim also is premised upon Rules 58, 59 and 60 of the Agreement which read as follows:

"RULE 58.

RUNNING REPAIRS

Machinists assigned to running repairs shall not be required to work on dead work at points where dead-work forces are maintained, except when there is not sufficient running repairs to keep them busy.

RULE 59.

DEAD WORK

59(a) When a locomotive is held for the following repairs, such work will be termed dead work:

1. Locomotives undergoing classified repairs
2. While undergoing repairs on drop pit for one or more pairs of driving wheels.
3. Applying full set of cylinder frame bolts, rebushing of main cylinders, removing and applying front end steam pipes or full set of superheater units.

4. Annual inspections and flexible stay bolt caps.
5. Full set of tires.
6. Flues - 35 or more.
7. Repairs to firebox sheets or shell of boiler, such as patches or heavier work.

59(b) The foregoing is to apply to such shops as DeCoursey, South Louisville roundhouse, Corbin, Ravenna, Boyles, Radnor and Mobile, where deadwork forces are now established.

59(c) At other points where classified repairs are not being made, this rule will not apply; but in the event it is decided to make classified repairs at other points, this rule shall apply.

RULE 60.

DEAD WORK AND RUNNING REPAIRS

Dead-work forces will not be assigned to perform running repair work, except when the regularly assigned running repair forces are unable to get engines out in time to prevent delay to train movement."

The Organization urges that the reseal programs undertaken at Radnor in 1973 - 74 fall squarely within the definition of "dead work" as that term is defined in Rule 59 and that Carrier thereby violated Rule 58 by assigning "running repair forces" rather than "dead work forces" to do that work. Carrier answers that Rule 59 is a steam locomotive rule by its very terms and does not apply to the instant reseal program or diesel locomotives. The Organization retorts that the parties and this Board must interpret the Agreement as a living document and construe it in light of the diesel age by applying it to heavy repair work, such as reseal programs, on diesel locomotives.

The positions argued herein by the Organization relative to Rule 59 are well taken, ably presented and not without considerable merit. But in the facts of this record and in light of many precedent Awards we cannot bring ourselves to engage in the degree of "gap-filling" and "modernizing" of this bilateral Agreement which the Organization seeks. Were we to do so it surely would be usurpation of the rights and responsibilities of the parties to negotiate their own Agreements. See Awards 6091, 6092, 6354, 6614, and Third Division 19239. We are especially persuaded to this view by the conceded facts that the Organization has sought in negotiation to modernize and update Rule 59 to make it applicable expressly to diesel locomotion but has been rebuffed. We cannot by interpretation place the Organization in a position it could not obtain through negotiation. Finally, we note that Rule 59(a) (1) references "classified repairs" but that term was nowhere defined in the record by either of the parties and we search the Agreement in vain for definition of such terminology. In the face of this void in the record we may not assume or speculate that

Form 1
Page 5

Award No. 7068
Docket No. 6842
2-L&N-MA-'76

59 (a) (1) would provide adequate ground to support this claim. On the basis of all the foregoing; therefore, we must dismiss the claim for lack of Agreement support.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of June, 1976.