

Award No. 1439

Docket No. 1361

2-TC-MA-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the work of maintaining power operated coal stokers is machinists' work within the meaning of the current agreement.

2. That the carrier violated Rules 25, 26 and 51 thereof when the services of an outside firm were obtained to repair a stoker on September 30, 1949 thereby damaging the employes of the machinists' craft.

3. That accordingly the carrier be ordered to cease contracting the stoker work out and compensate Machinist Leon Parker and Machinist Helper T. D. Grimes for said work in the amount of eight (8) hours at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At Nashville, Tennessee the carrier maintains a passenger station located one mile from the shops equipped with a stoker fired heating plant. Due to the cold weather September 30, 1949 an effort to operate the heating plant stoker ended in failure. The carrier notified the Automatic Heating Company whose workmen inspected the stoker, cleaned and oiled the transmission and freed the feed screw which had become jammed by a residue of dirt and coal.

The case was handled from bottom to top with carrier officials designated to handle such affairs who all declined to adjust the dispute.

The agreement effective October 1, 1922 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the maintenance of the power operated coal stoker at the carrier's passenger station is work accruing to the machinists under Rule 51 of the agreement providing in part:

"Machinists' work shall consist of . . . and all other work generally recognized as Machinists' work."

and Rule 26 providing in part as follows:

The main issue involves the right of claimant employes to the work of servicing the stoker of heating plant at the Nashville passenger depot, and carrier submits that rules cited and relied upon by employes not only fail to support their position but that they support the position of carrier, and claim should, therefore, 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.

The parties to said dispute were given due notice of hearing thereon.

It is fundamental that work covered by a contract with the employes cannot be contracted out to others. Here it appears that one of the services performed by the contractor involved fixing a frozen worm. That is clearly a machinist's function and covered by the contract with the organization. The argument that the territorial limits of the seniority provisions of the agreement limit the scope of the agreement as a whole is not valid; if there is in fact such a hiatus as the carrier contends, that is a matter that is subject to negotiation between the parties, but it cannot affect the scope of the agreement. However, it is thought that the interpretation of those seniority rules suggested by the carrier is too narrow. The reference to shop in those agreements must be considered to embrace any work at the terminal where the shop may be located barring there being some other seniority district at that terminal. The claim here is for both a machinist and helper. There is nothing in the evidence that would indicate that the work done by the contractor was such as to require a helper in addition to the machinist. The whole time consumed by the contractor in doing machinist's work and other work was about two hours and forty minutes. Accordingly, the claim will be sustained as for a four-hour call for Machinist Parker.

AWARD

Claim of Machinist Parker sustained for a four-hour call (at straight time rate). Claim of Machinist Helper Grimes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary.

Dated at Chicago, Illinois, this 27th day of March, 1951.