

Award No. 2544

Docket No. 2256

2-PRR-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier on November 23, 1953, improperly assigned other than Machinists and Machinist Helpers of the Maintenance of Equipment Department to dismantle, repair and re-assemble road machinery and equipment in violation of the Graded Work Classification for Machinists.

2. That accordingly the Carrier be ordered to assign Machinists and Machinist Helpers of the Maintenance of Equipment Department to dismantle, repair, and re-assemble road machinery and equipment in accordance with the Graded Work Classification for Machinists.

3. That the Carrier be ordered to compensate the employees named below as follows:

(a) Eight hours at Machinist grade "E" rate for November 23, 1953, and for each work day thereafter as long as this work is done by M. and W. Employes, for L. W. Martin and J. D. Gawthrop furloughed machinists.

EMPLOYES' STATEMENT OF FACTS: The following is the joint statement of agreed-upon facts as agreed to on the property between the carrier's Superintendent H. H. Vaughn and the local chairman of the International Association of Machinists N. D. Cleland.

The equipment herein involved is roadway equipment, in particular Power Ballasters and McWilliams Power Tampers, which are operated by the M. of W. Department and maintained by M. W. equipment repairmen during the working months.

Commencing in November, 1953, certain M. of W. Department employes reported at Logansport, Indiana, with the above mentioned equipment. While

payment of this rate for the work in question and does not support the employes' claim.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, Is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Railway Employees Department, A. F. of L., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has conclusively shown that there has been no violation of the applicable agreement in the instant case and that the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

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.

The claimants herein maintain that certain work performed by employes in the Maintenance of Way Department should have been performed by members of the Maintenance of Equipment Department, and request compensation for this alleged deprivation of work.

The dispute originated at the carrier's Back Shop, Fort Wayne, Indiana, and the machinery involved is roadway machinery, particularly power bal-lasters and power tampers which are used by Maintenance of Way employes to maintain the carrier's right-of-way. During the work season from early Spring to late Fall the machines are operated, maintained and repaired by Maintenance of Way employes. In the past, during the winter months the machines have been overhauled and repaired by either the manufacturers of the machine or on occasion by Maintenance of Equipment employes. Commencing in November, 1953, Maintenance of Way employes were given a course of special instructions in dismantling, repairing and reassembling these machines. Between November, 1953 and April, 1954 only 1 machine was repaired by Maintenance of Equipment employes.

The claimants maintain that they have been deprived of an exclusive right to do this work as given to them by the applicable Agreement. A careful examination of the Agreement discloses no such exclusive right. The Agreement provides for a rate when and if the work is performed by Maintenance of Equipment employees. The Agreement does not say all such work will be performed by them. Furthermore, the record indicates that it has been the past practice to generally have these machines repaired by the manufacturers or Maintenance of Way employees. Also, the carrier has some 8 operating geographic regions and in 6 of those regions this work is performed by Maintenance of Way employees. The evidence offered by the Claimants simply does not support the claim that machinists are entitled to perform the work exclusively by practice. For many years part of the work has been partially farmed out to the manufacturers, or performed by employees other than machinists, according to the record in this case. We find from the record that the work involved herein is not under the terms of the Agreement, work belonging exclusively to the Machinists, and that the carrier did not violate the Agreement by assigning the work to others.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.

DISSENT OF LABOR MEMBERS TO AWARDS NO. 2544 and 2545.

The majority concedes that the instant work is included in the agreement between this carrier and System Federation No. 152, which reads in part under "Machinists Graded Work Classification," listed in under Grade C, "Repairs to plant, **Road Machinery and Equipment**," but when making the award ignored the provisions of said agreement. The agreement was made pursuant to the Railway Labor Act, Section 2 Seven of which requires:

"No carrier, its officers or agents, shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

Therefore the majority has erred in making the instant awards.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink