**Award No. 3158**
**Docket No. 2943**
**2-MKT-MA-'59**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**DISPUTE: CLAIM OF EMPLOYES:**

1—That the repairing and testing of E. M. D. diesel fuel injectors is Machinists' work under the current agreement.

2—That on or about July 30th and August 5, 1957 when the Carrier assigned the aforesaid work to the Electro-Motive Division factory at Robertson, Missouri, the current agreement was then violated and which thereby damaged its employes of the Machinists' Craft.

3—That accordingly the Carrier be ordered to compensate, as a penalty for the aforementioned violation, Machinists L. W. Clarke and J. M. Parks, an equal number of hours for the corresponding number of hours of labor charged to the Carrier by the Electro-Motive Division for the performance of the work in question.

**EMPLOYES' STATEMENT OF FACTS:** At Parsons, Kansas, the carrier maintains its largest diesel locomotive shop, which is fully equipped to make any and all repairs to diesel locomotive engines, including the component parts thereof. This shop, like other diesel shops throughout the railroad industries, consists of a general erecting floor and overhauling department for diesel engines and appurtenances such as governors, compressors, heads, liners, and all other parts which are completely dismantled, repaired and assembled.

In this particular engine overhauling department there is also located a fuel pump and injector room wherein three machinists were regularly em-

between the parties, it is stepping over into a field that the Act expressly reserves to the parties themselves, with the assistance of arbitration, mediation and emergency board.

"Moreover, if agreements made by a railroad and its employes through the process of collective bargaining are real contracts and not worthless scraps of paper, then **disputes arising out of the application of a contract must be decided by the Adjustment Board in accordance with the provisions of the contract itself, and not on grounds lying wholly outside of and independent of the contract. If the decision of the Board is based upon some other ground than the contract, the contract is of no effect at all, and there might as well be no contract.**

**"The present claim must be decided under the contract and under the contract it is invalid."**

The Board would be required to write a new rule to support the penalty requested by the organization as the persons for whom penalty is claimed are not covered by the agreement or employes; the agreement requires payment only for work performed, and this penalty is for work not performed; all positions are required to be regularly assigned and employes occupying are limited to 40 hours assigned per week for work actually performed.

The request of the employes is clearly for a penalty. The request is clearly for a penalty not contained in the agreement. And, it is self-evident the request is one for the Board to rewrite the agreement for the employes through the guise of an interpretation and thus exceed their lawful authority and jurisdiction.

The penalty claimed is clearly not due under the agreement, and the carriers respectfully request the claim be denied.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim, and grant said railroad companies, and each of them, such other relief to which they may be entitled.

**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 were given due notice of hearing thereon.

In this docket claim is made for the number of hours of labor charged by an outside manufacturer for the work of repairing and testing fuel injectors shipped to a manufacturer by the carrier on July 30 and August 5, 1957. Compensation is requested for two furloughed machinists as a penalty.

The carrier claims that certain remanufactured units with a warranty were purchased and delivered before a like number were collected on the property and sold to the manufacturer as scrap. This has not been refuted by the organization.

It is difficult to establish exact facts in such cases. We incline to believe that the old units were traded in and we can only conjecture as to whether the price allowed was for scrap.

It is shown only as an unsupported conclusion that the units were in fact rebuilt after being purchased by the manufacturer as scrap. However, there is no doubt that if the old ones were repaired they belonged to the manufacturer at that time and their original identity has been lost to our view in the present case. This is the point of distinction between the facts in our Award No. 2841 and the present case.

While the statement of claim that the repairing and testing of injectors is machinists' work is true, the application of the rule is limited to work connected with the carrier's property.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1959.

**DISSENT OF LABOR MEMBERS TO AWARD NO. 3158.**

Contrary to the findings of the majority in Award No. 3158, the record shows that work subject of this dispute has been regularly performed by machinists, subject to the agreement between this carrier and System Federation No. 8, and is controlling.

In an effort to justify their erroneous award they make the unsupported statement—

> that the carrier has the right to trade in used or worn equipment as part of the purchase price of rebuilt or new equipment.

Examination of the aforesaid controlling agreement discloses no exceptions expressed or implied.

The repairing and rebuilding of equipment of this type is work which belongs to the machinists in under their agreement—specifically see Rule 45 of said agreement.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink