

Award No. 3159

Docket No. 2950

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.

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYEES:

1—That the regrinding, reboring and repairing of piston cylinder liners of E. M. D. diesel engine is Machinists' work under the current agreement.

2—That on or about February 24, 1957, the Carrier assigned the grinding of 51 E. M. D. diesel engine cylinder liners to the Electro-Motive Division, LaGrange, Illinois, and thereby violated the current agreement and damaged its employees of the Machinists' Craft.

3—That the current agreement was further violated, particularly the agreement of August 21, 1954, which is Rule 27 of our current agreement, when the Carrier's Master Mechanic failed to comply with Rule 27(b) & (d) and the August 21, 1954 agreement in this claim.

4—That accordingly the Carrier be ordered to compensate, as a penalty for the aforementioned violation, Machinist E. H. Thomas 4½ hours pay for each of the above liners or an equal number of hours for the corresponding number of hours of labor charged to the Carrier by the Electro-Motive Division for performance of work in question as substantiated by the E. M. D. bill charged to the Carrier.

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 employees; 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 employees occupying are limited to 40 hours assigned per week for work actually performed.

The request of the employees 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 employees 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 employees 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 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 were given due notice of hearing thereon.

It is clear from the facts submitted in this docket that carrier sent 51 of its cylinder liners to the E. M. D. factory for over-sizing, which consists of reboring, grinding, honing, testing and packaging. After the work was completed, the oversize was noted and the cylinders were returned to the carrier. The material continued to be the property of the carrier at all times.

From the work described and the exhibit offered, we conclude that that was in fact repair work such as had previously been done by the employees who must have had the required skill and using the necessary facilities provided by the carrier.

It follows as a necessary conclusion that this action deprived the employees of the work covered by their agreement and that the rules have been violated.

AWARD

The claim is sustained.

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.

CARRIER MEMBERS' DISSENT TO AWARD NO. 3159.

The Scope of the Agreement involved is defined as follows:

"It is understood that this agreement shall apply to those who perform work specified in this agreement in the Reclamation Plant and Maintenance of Equipment Department."

This Scope is paramount to the question of ownership. The Carrier as an employer did not surrender at the bargaining table the right it exercised in this case nor does the written agreement inhibit the Carrier in this respect. None can say that the claimant performed work specified in the agreement in the Reclamation Plant and Maintenance of Equipment Department, therefore the Shop Craft Agreement involved would not have application here and this Division is beyond its statutory authority in making an award in his favor.

In denying the claim in Award No. 3171 the Division said:

"The shop craft agreement involved herein applied to those who performed the work specified in said agreement, in the Maintenance of Equipment Department, and therefore, would have no application here."

which is particularly fitting to this case for the work at issue in that award, as here, was not performed in the Maintenance of Equipment Department.

The Agreement only covers work which the Carrier has to offer. We dissent.

M. E. Sommerlott

D. S. Dugan

E. H. Fitcher

D. H. Hicks

R. P. Johnson