Award No. 3233
Docket No. 3105
2-CRI&P-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. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the building, assembling, dismantling and repairing of diesel engines is Machinists' work under the current agreement.

2. On August 19, 1954 the Carrier transferred the overhauling and repairs of one 16 cylinder E. M. D. diesel engine, serial number 2510, from its shops at Silvis, Illinois to the Electro-Motive Division of General Motors Corporation.

3. That, accordingly, as a penalty for the aforementioned violation, the Carrier be ordered to compensate Machinists George Ehlers and Hubert W. Hansen an equal number of hours, at the time and one-half rate, to correspond with the number of hours of labor charged to the Carrier by the Electro-Motive Division of General Motors Corp. for the overhauling and repairs to this diesel engine.

EMPLOYES' STATEMENT OF FACTS: This carrier maintains at Silvis, Illinois its largest diesel locomotive repair shop, which is fully equipped to make any and all repairs to diesel locomotives and diesel engines, including the component parts thereof. This shop consists of a general erecting floor and overhaul department for diesel engines and appurtenances, such as compressors, governors, fuel pumps, injectors, cylinder heads and all other parts which are completely dismantled, repaired and assembled, in addition to a running repair department.

Machinists are regularly assigned at Silvis Shop to completely overhaul all types of diesel engines, including the 16 cylinder E. M. D. engine referred to in this claim, and such rebuilding and overhauling is performed daily in this shop.

vantage of a manufacturer's service, such as the engine exchange basis, to secure remanufactured engines and remanufactured, modernized, improved, upgraded and warranted engines and a type of engine that only the manufacturer can produce and one which the manufacturer is constantly striving to improve and modernize.

The prerogative of management permits managing officers to choose between available methods in furthering the purpose of the carrier. If such method chosen is one ordinarily pursued by management in the industry, it should be considered as a proper exercise of managerial judgment. (See Award 2377 of your Board.) In the instant case, it was the carrier's judgment that the proper and sensible thing to do was to take advantage of the engine exchange service offered by the manufacturer and secure from them a complete, modernized, upgraded, and warranted engine rather than attempt to repair or rebuild worn and antiquated 567-B engines in kind which would not give us the advantage of a remanufactured, modernized, converted and warranted engine. The practice of trading used or worn-out or obsolete equipment as part of the purchase price of remanufactured, rebuilt or new equipment is not new, in fact, it is the usual custom.

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted engines received on unit exchange purchase orders for older engines, bear more resemblance to the purchase of new engines than to the maintenance and rebuilding of old engines.

We submit that this case is similar to that found in your Board's Award 2377.

We submit, also, without relinquishing our position as above, that the claimants involved were fully employed and, of course, can show no loss of earnings or injury in connection with this case, but assuming their claim has merit, which, of course, we deny, it is a well-established principle of this and other divisions of the Adjustment Board, that if penalty is to be assessed by this Board—and there is no rule in the employes' agreement providing for such—it can only be at pro-rata rate.

On basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employes' agreement.

We respectfully request your Board to deny this claim.

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.

Our Award No. 3228, deciding Docket No. 3063 determines the issue presented herein.

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 10th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3228, 3229, 3230, 3231, 3232, 3233 AND 3269.

In the findings of the majority in Award No. 3228 they recognize that machinists' work was performed on these Diesel Engines.

The Machinists' Classification of Work Rule No. 53 of the current agreement reads in part as follows:

> "Machinists work shall consist of * * * building, assembling, maintaining, dismantling and installing locomotives and **engines** (operated by steam or other power) * * *." (Emphasis ours.)

The work of dismantling, rebuilding and assembling of Diesel engines comes within and is subject to the provisions of the above rule and has been performed by this carrier's machinists—See Awards Nos. 1866 and 2841 of this Division. Further, under the date of August 4, 1948, the scope rule of the current agreement was changed to prevent the assignment of work to other than employes covered by this agreement and reads in part as follows:

> "It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Departments and in other departments of this railroad *** * * is to prohibit the carrier from hereafter unilaterally assigning the work specified in this agreement to other than employes covered by this agreement.** * * *." (Emphasis ours.)

When the carrier assigned this machinists' work to other than employes covered by this agreement they violated said agreement.

Therefor the majority's award is in error and we are constrained to dissent.

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink

Edward W. Wiesner