

Award No. 3389

Docket No. 3113

2-CofG-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier improperly assigned Maintenance of Way Railwelder Youmans, and his helper, to make repairs to ballast regulator plow at or near Columbia, Alabama, on March 25, 26, 27, 1957.

2. That accordingly the Carrier be ordered to additionally compensate Machinist J. J. Connor and Machinist helper, Reedy Kellum in the amount of 32 hours each at their applicable rate of straight time pay.

EMPLOYEES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, employs several traveling machinists which are designated as roadway mechanics whose regularly assigned bulletined duties are to make repairs to all roadway equipment such as motor cars, weed burners, tamping machines, power tools, etc., and other work assigned.

Machinists J. J. Connor and Machinist Helper Reedy Kellum, hereinafter referred to as claimants, are furloughed employees of the carrier, holding seniority in their respective class at Macon, Georgia, with the right, under the controlling agreement, to restoration to service and to perform the work in dispute.

The carrier also has a number of mechanical gangs in the Maintenance of Way Department and it is customary to assign one or more, roadway mechanics to each of these gangs to make such repairs and adjustments as can be made on the road without having to send this roadway equipment back to the shop for repairs.

Two of these roadway mechanics, Machinist E. G. Fields and M. H. Burden, were at the time in question working on other roadway equipment in the same gang, but were about 3 miles away.

The blades of the ballast regulator plow, a piece of roadway equipment, became worn to the extent they required building up by welding, and the carrier

See Section 3 First (i) of the Act.

The Board has heretofore held that such limitations have been placed upon it by law, and that it **does not** have authority to write new rules. See **Third Division Awards Nos. 6828, 6007, 5864, 4439, 4435, 2491, and others.** Carrier prays, therefore, that a denial award is clearly in order for this one reason, if for no other. Carrier so urges.

The **burden of proof** rests squarely upon the shoulders of the petitioners. See **Second Division Awards Nos. 2042, 1996, and others.** Also see **Third Division Awards Nos. 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 5418, 2676, and others.**

S U M M A R Y

Carrier has proven beyond any doubt that

1. Third party notice has not been extended to the Brotherhood of Maintenance of Way Employees who have a genuine interest in this dispute.

2. There is no rule or rules to support the claim in the shop crafts' agreement.

3. The Brotherhood of Maintenance of Way Employees have a rule in their agreement covering certain repairs to roadway equipment.

4. Past practice most assuredly does not support the employees' position. Performance of the work by contract as well as by carrier's employees as outlined in detail in carrier's Exhibit A was in keeping with accepted past practice as shown by probative evidence. **No labor organization has an exclusive right to perform all work on all roadway equipment.**

5. The claim is in fact a request that the Board grant the machinists a **new all-encompassing** rule. That under such facts in the past this Board has correctly held it is without authority to grant new rules, and

6. Since the claim clearly is **not** supported by the current contract on this property, the Board should not do other than render a denial award.

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.

The agreement does not specify the work involved in the subject case. Repairs to roadway equipment often have been made by persons outside the agreement over a period of many years. We therefore must hold that employees in the machinist craft on this property do not have exclusive jurisdiction over the work here in dispute.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1960.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3387, 3388, 3389 and 3390.

The majority ignores the clear and unambiguous terms of the controlling agreement—Machinists' Special Rule No. 52 reading as follows:

“Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing * * * engines (operated by steam or other power), cranes and machinery * * * and all other work generally recognized as machinists' work. (Emphasis ours.)

Awards of this Division, No. 170 without a referee and No. 726 with the assistance of a referee has held this language to mean that maintaining of gas engines is machinists' work.

Maintenance of machinery is spelled out in Rule No. 52 and this Board has repeatedly held that when a rule is clear and unambiguous, practice does not supersede the rule.

Therefore the majority erred in making these awards.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink