Award No. 3428
Docket No. 2611
2-AT&SF-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the employes of the Machinist Craft at Amarillo, Texas was unjustly damaged when their work of welding on Cribex machine chains was taken from them and assigned to roadway work equipment machine operators.

2. That accordingly the Carrier be ordered to additionally compensate machinist and/or machinists to be designated by the organization party to this dispute, and who are employed by the Carrier at Amarillo, the amount of a four hour call each, beginning January 26, 1956 and continuing for each and every day the class of work in dispute was performed by others while in the vicinity of Amarillo.

EMPLOYES' STATEMENT OF FACTS: On November 28, 1955, carrier organized a mechanized tie renewal gang to work on the line between Amarillo and Pampa, Texas. Nine Cribex machines were assigned to this gang. These machines are equipped with mechanically operated continuous chains whose function is to remove ballast from between the ties. These chains are nine feet in length and are generally constructed of thirty-six interlinking bars. Each bar has two digging picks as an integral part of the bar casting. The digging tips are subjected to above normal wear account the abrasive quality of the ballast.

Prior to January 26, 1955, the chains were brought into the carrier's Amarillo Roundhouse and boilermakers were assigned to build up the digging tips with hard surfacing electric welding rods. The operation consists of building up the tips to standard and squaring up the ends of the interlinking bars.

In conclusion the carrier asserts that the welding performed by the roadway machine operator was in accordance with Rule 49, Paragraph (b), of the shop crafts' agreement, previously quoted, in that only such incidental welding as was necessary for the continuous operation of the machines and the tie renewal gang was performed by the roadway machine operator.

Carrier submits that the employes' claim on behalf of unnamed employes is not properly before this Board as contemplated by Rule 33, Paragraph (a), of the shop crafts' agreement, previously quoted, and numerous awards of the National Railroad Adjustment Board.

Carrier therefore respectfully requests this Board to deny the employes' claim in its entirety.

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.

On November 28, 1955 the carrier organized a mechanized tie renewal gang to work between Amarillo and Pampa, Texas. There were nine (9) Cribex machines assigned to this gang. Due to the abrasive action of the ballast the digging lugs rapidly became worn, and it was decided that the service life of the digging chains could be extended considerably by building up the lugs with hard surfacing electric welding rods. Several sets of the chains with worn lugs were sent to the carrier's Amarillo Shop where a boilermaker was assigned to building up the lugs.

The local chairman of the Machinists' Organization advised the carrier that the work of welding these lugs was work coming under their classification and after investigating their claim the carrier assigned this work at Amarillo to the machinists.

After four or five sets were repaired by the machinists the Track Department found that the sending of these chains to Amarillo and returning to the tie renewal gang was causing considerable delay. In view of this, a roadway machine operator was assigned the work. Sufficient supply of these chains was being received from Albuquerque Work Equipment Shop by about March 30, 1956, so it was unnecessary for the continued services of the roadway machine operator after this date.

It is the contention of the carrier in this dispute that the welding of the lugs, performed by the roadway machine operator, was necessary to the continuous operation of the machines and the tie renewal gang. The carrier contends that Paragraph (b) of Rule 49 provides for such handling as such work comes under the classification of minor repairs. The carrier further states that this claim is not properly before this Board under Paragraph (a) of Rule 33.

The organization denies that the work in dispute may be classified as minor repairs under Paragraph (b) of Rule 49 and contends that a proper claim has been filed and it meets the requirements of Rule 33, Paragraph (a).

First, we feel that sufficient identification of claimants was made when the dispute was handled on the property to comply with the provisions of Rule 33, Paragraph (a) when the claimants were identified as "Claim of Amarillo Machinists." This Division has agreed (Award 1998) that it is unnecessary to prosecute individual claims; it is sufficient that the claimants may be clearly identified without difficulty from the carrier's records. The rule also says that when claim or grievance is disallowed the carrier shall within sixty (60) days from the date same is filed notify the employe or his representative in writing of reasons for such disallowance. This objection was not raised as prescribed by Rule 33(a) at the time the claim was disallowed.

The carrier in interpreting the agreement at the time the organization raised the question of boilermakers doing this work reassigned same to the machinists. We are unable to now deny that it was not work coming under their (machinists) classification.

The carrier raises the question regarding minor repairs under Rule 49(b). The carrier's submission explains that "Nine Cribex machines were in service in this particular gang. The digging tips of these Cribex machine chains wore rapidly and they were sent to Amarillo for repairs but this resulted in the machine being out of service and delayed the work." The work was precisely the same in each instance, "welding of Cribex machines." We are of the opinion that this welding belonged to the machinists under the agreement and when the parties wrote their letter of understanding they intended that the motor car maintainers (machinists) should perform this work when it was to be performed away from the shops.

The carrier could have assigned a sufficient number of motor car maintainers to this work which would have avoided any delay but the agreement does not permit the assignment of this work to any other craft. It is admitted that this practice was followed for a period of sixty (60) days and there was on an average of about two (2) hours per day devoted by the machine operator to the building up of the lugs of the Cribex machine chains.

In our opinion the carrier took work that properly belonged to the machinists' craft at Amarillo, Texas and assigned it to the roadway work equipment machine operators in violation of their agreement and that the carrier should compensate the machinists employed at Amarillo, Texas in amount of a four (4) hour call each at the current rate beginning on January 26, 1956 to March 30, 1956.

AWARD

Claim sustained as per above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1960.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3428

There are two reasons for this dissent:

1. The award is beyond the reach of not only the Division's statutory authority but also the scope of the controlling agreement, and

2. If such agreement did apply it would have, if applied properly, denied the claim,

A local arangement shifting to machinists from boilermakers certain work on materials **in custody** of the Maintenance of Equipment Department is characterized in the findings as an **interpretation** by saying "The Carrier in interpreting the agreement . . ." However, an interpretation to be binding on the controlling agreement is the job of not local or division representatives but top level representatives of the parties, which is for the Carrier its Chief Operating Officer, designated for purposes of the Railway Labor Act. Nothing in this record shows that the jurisdictional problem of this case received the formal attention and approval of those having real authority to interpret the agreement. What was done **locally** ought not be determinative in this case.

The Letter of Understanding of January 31, 1948 mentioned in the findings obviously contemplated just such a situation as the instant case presents for in Item 4 thereof an exception appears:

> ". . . except as otherwise provided in the rules of the general agreement."

The general agreement is limited in scope and the preamble of that agreement, which must be given equal force and effect and considered in conjunction with all rules incorporated therein, provides that such agreement shall apply to employes who perform work outlined therein **in several departments** of the Carrier. The Maintenance of Way Department is not one of those departments. The preamble defining the scope is the first rule of the controlling agreement and to stretch it beyond its express intendment to the Maintenance of Way Department as was done in this award cannot be justified under the statutory authority of this Division. If this should be done it is a job for the parties.

The claim should have been denied as was done by this Division in awards involving the **scope of the same working agreement** controlling in this case, i.e., Awards Nos. 1501, 2617 and 2695.

Now to consider the second reason for this dissent.

Rule 49(b) of the controlling agreement would have, if properly applied to the essential facts, denied the claim in this case. This is emphasized by the following excerpt whereby it is provided:

> "Nothing in this Agreement shall be construed to prevent * * * operators of roadway equipment and machines, * * * from making minor repairs to equipment they operate **incidental to the continuous operation of** * * * roadway equipment, * * *" (Emphasis added)

The nature of minor repairs matters not; it is sufficient under Rule 49(b) that such repairs be incidental to the continuous operation of roadway equipment. That is exactly what occurred in this case, i.e., on-the-job repairs to equipment working on the line-of-road under the jurisdiction of the Maintenance of Way Department were made incidental to keeping such roadway equipment in continuous operation. "Minor repairs" is a reasonable construction of such work which amounted to not more than two hours per day, thus falling far short of a day's work as measured by the controlling agreement. The award has wrongfully denied to the Carrier the benefit of Rule 49(b).

The Claimants in this case are unknown to the Carrier. They are to be designated or identified or selected according to the whim of the Organization if it be successful in obtaining a sustaining award on this claim in a case wholly unsupported by the controlling agreement. This mode of procedure is contrary to the plain meaning of Rule 33. Strict compliance with the rules of the controlling agreement is a requirement of both parties lest the contract become a nullity. The employes here have not complied therewith (and they are not exempt from so doing) for: (1) Machinists in whose behalf claim is made have not filed claims with the Carrier, and (2) Machinists in whose behalf the petitioner advanced this claim on the property and to this Division have not been specifically identified. (Award No. 3083). Moreover, the petitioner has not advanced any rule under which in the circumstances of this case the monetary feature of the claim could be sustained. The Carrier is not obligated to underwrite a faulty claim.

The overall effect of this award has denied to the Carrier the rightful application of its agreement with its employes in the Maintenance of Equipment Department. We dissent.

M. E. Somerlott

P. C. Carter

D. S. Dugan

D. H. Hicks

R. P. Johnson