

**Award No. 3585
Docket No. 2913
2-CRI&P-MA-'60**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., 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 & 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. That on February 16 and 17, 1954 the carrier transferred the overhauling and repairing of two 12 cylinder, Model 567-B Diesel engines, Serial numbers 6733 and 6734, from its shops at Silvis, Illinois to Electro-Motive Division of General Motors Corporation.

3. That, accordingly, as a penalty for the aforementioned violation, the Carrier be ordered to compensate Machinists Walter G. Budd, Elmer P. Sauer, Fred L. Murphy and Earl R. Zierke 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 Corporation for the repairs to these diesel engines.

EMPLOYES' STATEMENT OF FACTS: This carrier maintains its largest diesel locomotive repair shop at Silvis, Illinois, which shop is fully equipped to make any and all repairs to diesel locomotive engines, including the component parts thereof. Silvis Shop consists of the general erecting floor and overhaul department for diesel engines and appurtenances, such as compressors, pistons, liners, cylinder heads, fuel pumps, blowers, steam generators and all other parts which are completely dismantled, repaired and re-assembled, except crankshaft grinding.

Machinists are regularly assigned at Silvis to completely overhaul all types of diesel engines, including the 567-B Models referred to in this claim, and we emphasize such engine overhauling is performed daily at this shop.

This carrier has recently assumed the attitude that regardless of the provisions of the agreement, it has the right to farm out the repairs of any equipment to an outside company or back to the factory whenever it sees fit, on the apparent theory that it may save money in having the work performed off of the property.

pared with the high cost which would result from acquiring the plant and equipment needed to remanufacture engines on railroad property.

Because of the tremendous cost required to enable it to perform such work, and the high unit cost of such work, Rock Island has never attempted to perform it.

This case, we submit, resolves itself into one question, i.e., has the carrier, in its managerial responsibilities and prerogatives, the right to determine whether to repair worn-out and antiquated engines in kind or to take advantage 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. 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.

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 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 employees' agreement providing for such — it can only be at pro-rata rate.

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

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

In February 1954 the carrier transferred two 12 cylinder 567-B diesel engines to Electro-Motive Division of General Motors at LaGrange, Illinois, in exchange for two re-manufactured 567-BC engines.

The employees maintain that the carrier's action was tantamount to farming out the work of over-hauling and repairing the two 567-B diesel engines in violation of the current agreement on the property, because part of the consideration for the exchange involved an obligation on the carrier to pay Electro Motive Division the cost of the subsequent over-haul of the two engines turned over to it. A corollary to the organization's position is that the carrier maintained adequate facilities and a force of competent machinists at its Silvis, Illinois repair shop to make any and all repairs to diesel engines, including component parts; that rebuilding and converting diesel engines is customarily done at that shop, and that consequently it was unnecessary to send the two engines in question to EMD for rebuilding. The carrier maintains that it is not equipped to remanufacture, upgrade and modernize a diesel engine and that to enable it to perform such work would require the purchase of tools, and equipment and parts the cost of which would be uneconomical and unwarranted. The carrier also points out that the re-built engines received by it in exchange carried the manufacturer's new engine warranty.

We think that the claimants have misinterpreted the true nature of the transaction in these instances. If the carrier had turned over the two 567-B diesel engines to EMD to have them overhauled, rebuilt and returned to the carrier a different issue than is involved in this docket would be presented. On the record before us the carrier, in effect, sold two 567-B diesels to EMD and purchased from EMD two other engines. The record reveals that when the two 567-B engines were received at EMD's plant at LaGrange Park, Illinois the carrier had no further title or interest in them. EMD was free to dispose of them as it saw fit. The fact that the price the carrier was to pay EMD for the two newly reconditioned engines was to some extent to be determined by the ultimate cost incurred by EMD in rebuilding the two engines it had acquired from the carrier does not alter the fact that the transaction does not lend itself to the claim that it amounted to a wrongful farming out of repair work which by agreement belongs to employees of the carrier. The carrier's inherent power and responsibility for the economical and efficient conduct of its business in the interest of all concerned should not be interfered with on the ground that others might disagree with its judgment in a situation such as is here presented. The record shows that each of these 567-B diesel engines had logged 974,127 miles, and that as the result of the exchange made, the carrier received two remanufactured, upgraded and converted 567-BC engines with a new engine warranty from the manufacturer. The record does not permit us to say that the carrier's action was not taken in good faith or that it constituted an unauthorized exercise of managerial judgment.

The basic principle involved in this dispute has been heretofore considered by us and decided adversely to the employees in several cases. See our Awards Nos. 2377, 2922, 3158, 3228 and 3269. We are of the opinion that the instant claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1960.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3585 and 3586.

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 employees 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 Department, 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 employees covered by this agreement.** * * * ." (Emphasis ours.)

The carrier's farming out of the instant work is in violation of the agreement governing the employment of machinists. Therefore Awards Nos. 3585 and 3586 are in error.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink