Award No. 3949
Docket No. 3806
2-AT&SF-BM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Boilermakers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (Western Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the terms of the current agreement the Carrier improperly assigned work of the Boilermakers' Classification to Shop Extension Forces at Albuquerque, New Mexico.

2. That accordingly the Atchison, Topeka and Santa Fe Railway be ordered to additionally compensate employes of the Boilermakers' Craft at their applicable rate of pay, for the aforesaid violation as follows:

Tom C. Cordova	8 hours
Andres Santiago	8 hours
Total Hours	16 hours

EMPLOYES' STATEMENT OF FACTS: At Albuquerque, New Mexico, the Atchison, Topeka and Santa Fe Railway, hereinafter referred to as the carrier maintains a force of boilermakers and helpers, in their Diesel Repair Shops and Central Work Equipment Shop, who hold seniority at that point in accordance with the Rules Agreement.

On or about April 2, 1958, the carrier elected to add to their Diesel Locomotive Shop Equipment, a metal box, which tool box is used for storing tools used by the workmen in repair and servicing of Diesel Locomotives. The said tool box was approximately 32"x48" dimensions and approximately 32" in height. No. 12 gauge sheet steel was used for material.

Carrier assigned the work of laying out, fitting up, welding and application to the Shop Extension Forces. Shop boilermakers sheared the sheet steel to size needed, out of larger plate sheets.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier, all of whom have declined to make a satisfactory adjustment.

The agreement effective August 1, 1945, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier violated Rules of the Shop Crafts' current agreement particularly General Rules 29 (a) and Appendix B (1) and boilermakers' Special Rule No. 61, when it assigned the work involved in the Shop Extension Forces to perform and thereby deprived Boilermakers Tom C. Cordova and Andres Santiago of their vested rights of performing the work specifically spelled out in boilermakers' special Rule No. 61, which reads in pertinent part:

> ". . . The laying out and fitting up any sheet-steel or sheet-iron work made of 16 gauge or heavier . . . and all other work generally recognized as Boilermakers' work."

The above quoted part of the boilermakers' Rule No. 61 is plain, clear and unambiguous and, therefore, it cannot be consistently argued that the work herein involved does not clearly come within the scope of boilermakers' Special Rule No. 61.

The claimants herein involved have established seniority at the point in accordance with the provisions of Seniority Rule No. 28, of the current agreement, and therefore boilermakers have the exclusive right to perform all work of the classification of their special rules performed at that point. By the carrier assigning the work to other than boilermakers it was in direct violation of Rule 29 and deprived the claimants of their vested rights to perform the work herein involved.

Rule No. 29 in pertinent part reads as follows:

> "(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft . . ."

In handling the claim on the property of the carrier, it was established by the employes that Boilermakers had always performed work as herein involved at Albuquerque Shops. Nevertheless, the carrier insisted that the work was performed in accordance with the agreement and past practice.

General Rule Appendix B(1) states in pertinent part:

> "(1) Any controversies as to craft jurisdiction arising between two or more of the organizations, parties to the general agreement, shall first be settled by the contesting organizations, and existing practices shall be continued . . ."

It is respectfully submitted that the carrier did not continue past practices at Albuquerque, New Mexico, when other than boilermakers were assigned to fabricate metal tool box or shop equipment. Because as aforementioned, supported by exhibits, the employes had always in past years fabricated such equipment.

The employes do not admit that a jurisdictional dispute exists between the two organizations herein involved.

In view of the foregoing facts and positions, it is evident that the carrier wrongfully assigned the work herein involved to the Shop Extension Forces and by so doing injured the claimants to the extent set forth in the dispute claim, and your Honorable Board is requested to so find by sustaining the employes' statement of claim.

The practice of Shop Extensions Department forces performing work of the nature here involved was in effect prior to the effective date, August 1, 1945, of the Shop Crafts Agreement and extended over the carrier's entire system, consequently there is no substance to the general chairman's contention that the building and installation of diesel platforms by Shop Extension Department forces is confined to the particular points where such forces had previously installed that particular fixture or item of equipment. Furthermore, and as shown in the carrier's statement of facts, the seniority of Shop Extensions Department employes is not restricted to a single point, but under Rule 28(b) 2 extends over a grand division, or in this case the entire Western Lines, including Albuquerque, the location involved in this dispute.

It will be apparent from the above that the handling complained of in this dispute stems from an established practice that has extended over a period of more than thirty (30) years and throughout revisions of the Agreement without abrogation. The actions of the employes and their representatives clearly denote that they are through the medium of their claim in the instant dispute, requesting the Board to grant them that which they have, by their own actions, previously recognized is not required under the agreement rules.

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is wholly without support under the governing agreement rules and the long-standing practices thereunder, and should, for reasons expressed herein be dismissed or denied 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.

The instant claim involves essentially the same factual situation and legal questions as those discussed in our Award 3939. What we have said in that Award with respect to the building of a scaffold in connection with the construction and installation of permanent Diesel Repair Platform in the Carrier's Diesel Repair Shops at Albuquerque, New Mexico, is also applicable to the construction and installation of the metal tool box on such a platform with which we are here concerned.

Accordingly, we hold that the instant claim is without merit for the reasons stated in our aforementioned Award. As a result, it becomes unnecessary to rule on the Carrier's procedural objections and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1962.