Award No. 4118
Docket No. 3948
2-SLSW-FT-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Federated Trades)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier ignored the provisions of its contract with the various metal crafts, comprising System Federation No. 45 when between the dates of October 4 and October 8, 1959, St. Louis Southwestern Diesel Unit No. 820 was taken to the T&NO Houston Shop and given extensive repairs.

2. That accordingly the Carrier be ordered to:

   (a) Make whole the damaged employes as follows:

Machinist O. W. Couch	32	Hrs.	pro	rata	rate
Machinist C. C. Hawkins	32	"	"	"	"
Machinist Helper W. V. Townsend	32	"	"	"	"
Machinist Helper S. R. Richards	32	"	"	"	"
Electrician R. Turley	20	"	"	"	"
Electrician Helper H. King	20	"	"	"	"
Sheet Metal Worker C. Fleming	16	"	"	"	"
Sheet Metal Worker Helper J. Schultz	16	"	"	"	"

   (b) Refrain from the practice of sending St. Louis Southwestern equipment to T&NO repair points to have repairs made.

EMPLOYES' STATEMENT OF FACTS: St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, maintains at Pine Bluff, Arkansas, a complete diesel repair shop, equipped to service and maintain their fleet of diesel locomotives, and for the period October 4 through October 8, 1959, the above listed employes, hereinafter referred to as the claimants, held regular assignments in the locomotive department of carrier's Pine Bluff shops. All claimants were available for the service in dispute for the period in question.

Rule 34 covers assignment of work. Rule 34-1 provides:

> "34-1. None but mechanics or apprentices regularly employed as such shall do mechanics's work as per special rules of each craft, except foremen at points where no mechanics are employed."

While these rules have been in effect freight and passenger cars have been interchanged constantly with other roads. Repairs are made by the using road and billed against the owning road, except in case of damages resulting from accidents, collisions, etc., which are the responsibility of the using road, in which event the cost of repairs is not billed against the owning road. Occasionally a car may be sent to the home road for repairs, but it is done at the option of the carrier and not because of any right of the owning line employes to make the repairs. The schedule agreement makes no distinction between the handling of cars and locomotives in respect to ownership.

Also there are various points where work of two roads is unified and handled by one road. That is the case at Shreveport, Waco, Sherman and Lufkin where the work of the T&NO and the StLSW has been unified since 1931 and 1933. The StLSW handles work at the two larger points, Waco and Shreveport, and the T&NO at the two smaller points, Sherman and Lufkin. For many years the StLSW has operated into Memphis, Tennessee, over CRI&P trackage with engines being repaired and serviced by the Illinois Central at Memphis. As long as steam locomotives were operated into Dallas they were repaired and serviced by the Dallas Union Terminal. As long as passenger trains were operated into St. Louis the locomotives were repaired and serviced by the Terminal Railroad Association.

Thus employes under the agreement have never had exclusive right to make all repairs on equipment owned by the carrier.

The purpose of the reciprocal arrangement involved in the present case is maximum utilization of each carrier's diesel units. Units are operated and exchanged in service and the using carrier necessarily makes repairs needed to keep the units in operation as determined by its own forces and is responsible for damage due to improper operation while in its service. In the present case Unit 820 failed while in service on the T&NO lines as a result of improper operation by its employes. The repairs made and here complained of were necessary to restore the unit to service and were the sole responsibility of that road. In making the repairs they were not performing work to which the claimants had right.

In conclusion, the carrier respectfully submits that the facts outlined show that the claim is not supported by the rules and should be denied.

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 Employes' position is that the carrier improperly "elected to have a locomotive unit given extensive repairs by employes of another company."

The record shows that the repairs were necessitated by the negligent operation of Unit 820 on T&NO property by T&NO employes during interchange use there under a reciprocal agreement by which that railroad assumed liability for such damage. The Employes question the reciprocal arrangement by reference to a T&NO unit which went bad on carrier's lines but was returned to the T&NO for repairs; but the damage is not shown to have been caused by the negligence of St. Louis Southwestern employes or under other comparable circumstances.

The Employes' position further is that the carrier cannot by a reciprocal agreement transfer their work to the employes of another railroad. But this is not such a case. The damage did not arise on carrier's lines, on which claimants' rights exist, but on T&NO lines, which are subject to the rights of T&NO employes. It is not apparent how repairs of Unit 820, becoming necessary on T&NO property and performed there by T&NO employes, infringe claimants' rights any more than its use and operation there infringes the rights of carrier's operating employes, who likewise have no rights on T&NO lines. There is no indication in the record that the damage actually occurred on the carrier's lines and that the unit was then sent out for repairs elsewhere.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4118

The majority is in error, when on one hand admitting to the record showing St. Louis Southwestern Railway Company Diesel Unit No. 820 was repaired by the employes of the T. & N.O. Railway Company — then on the other hand denying the rights of the St. Louis Southwestern Railway employes to recover damages to the contracted rights in this instant case when they state:

> "The record shows that the repairs were necessitated by the negligent operation of Unit 820 on T. & N.O. property by T. & N.O. employes during interchange use there under a reciprocal agreement by which that railroad assumed liability for such damage. The employes question the reciprocal arrangement by reference to a T. & N.O. unit which went bad on carrier's lines but was returned to the T. & N.O. for repairs; but damage is not shown to have been caused by the negligence of St. Louis Southwestern employes or under other comparable circumstances.

The employes' position further is that the carrier cannot by a reciprocal agreement transfer their work to the employes of another railroad. But this is not such a case. The damage did not arise on carrier's lines, on which claimants' rights exist, but on T. & N.O. Lines, which are subject to the rights of T. & N.O. employes. It is not apparent how repairs of Unit 820, becoming necessary on T. & N.O. property and performed by T. & N.O. employes, infringe claimants' rights any more than its use and operation there infringes the rights of carrier's operating employes, who likewise have no rights on T. & N.O. Lines. There is no indication in the record that the damage actually occurred on the carrier's lines and that the unit was then sent out for repairs elsewhere."

The majority gives credence to an alleged reciprocal interchange agreement between the two above mentioned carriers over which this tribunal has no jurisdiction and ignores System Federation No. 45's agreement between the employes and the St. Louis Southwestern Railway Company which this tribunal has jurisdiction.

It is fundamental that work covered by an agreement made pursuant to the provisions of the Railway Labor Act cannot be contracted to others.

This principle is the very foundation upon which collective bargaining rights rest and to rule otherwise does violence to these basic rights and principles.

We dissent.

C. E. Bagwell
T. E. Losey
E. J. McDermott
Robert E. Stenzinger
James B. Zink