

**Award No. 4161
Docket No. 4125
2-CRI&P-BK-'63**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Blacksmiths)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement on or about September 15, 1960 the Carrier improperly sent Diesel Unit No. 1277 to General Motors Corporation for repairs of which consisted of heating, straightening and welding of the underframe.
2. That accordingly the Carrier be ordered to compensate Blacksmiths Frank Zora and Walter Henyan 32 hours' each at their applicable rate of pay. Claim dates are on or about September 15, 16, 19 and 20, 1960.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the carrier, maintains a shop at Silvis, Illinois where diesel repairs are made, including the heating, straightening and welding of damaged underframes of diesel locomotives. Diesel Unit No. 1277 was involved in a wreck whereby the underframe was damaged, on or about September 15, 1960, the carrier sent the unit to General Motors Corporation for repairs of which consisted of heating, straightening and welding of the underframe. This dispute was handled in the regular manner prescribed by the agreement, and under date of November 28, 1960, the claim was appealed to the office of Mr. G. E. Mallery, Vice President of Personnel, as indicated by the general chairman's letter. On August 15, 1961, the general chairman in an effort to settle the claim on the property discussed the matter with Mr. Lesovsky, Labor Relations Assistant, as shown in general chairman's letter.

The agreement effective October 16, 1948 as subsequently amended is controlling.

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 waived right of appearance at hearing thereon.

Diesel Unit No. 1277 — as the result of a major accident, was extensively damaged. Repair costs were estimated to be approximately \$80,000. Around September 15, 1960, the Carrier sent Diesel Unit No. 1277 to General Motors, LaGrange, Illinois, for repairs.

The Organization claims the Carrier's action violated Rule No. 78 of the controlling Agreement. The Organization further contends that:

1. The Carrier's diesel repair shop at Silvis, Illinois, is equipped to do the repair work on Diesel Unit No. 1277.
2. The Claimant Blacksmiths were qualified, willing and able to make the repairs.
3. Blacksmiths, in the past, have performed such repair work.

The Carrier, on the other hand, denies the Organization's contentions and claims that they are merely unsupported assertions. On its behalf, the Carrier contends that:

1. It was necessary to send Diesel Unit No. 1277 back to the manufacturer, because the Carrier did not have the equipment to make the extensive repairs required;
2. The Silvis Shop forces have never straightened a bent and twisted main frame of a diesel.

A thorough analysis and evaluation of the record, Rules 28, 78 and the Memorandum of Understanding was made. It is the Board's judgment that the Organization did not factually support its case and thereby justify its position.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.

DISSENT BY LABOR MEMBERS TO AWARD NO. 4161

The evidence of record is not disputed that the work involved in this case contractually belongs to the Blacksmiths' Craft.

The majority, in erroneously denying this claim, state that:

"A thorough analysis and evaluation of the record, Rules 28, 78 and the Memorandum of Understanding was made. It is the Board's judgment that the Organization did not factually support its case and thereby justify its position."

Since it is not disputed that the work involved in this case contractually belongs to the Blacksmiths' Craft, it becomes apparent that the majority denied the claim on an erroneous interpretation of the Memorandum of Understanding dated October 16, 1948 reading in pertinent part as follows: " * * * **nor change present practices as to handling of Maintenance of Equipment work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange.**" (Emphasis ours.)

The record discloses that in handling the case on the property the employees set forth the necessary tools required to perform the work and that the carrier's Silvis Shop was equipped with such tools. (See Employees' Exhibit B attached to their submission.)

In regard to the word "necessary," authority on the application thereof is contained in Second Division Award No. 1943, with Referee Mortimer Stone sitting with the Division when the award was rendered, reading in part as follows:

"The purport of that Memorandum has been considered by this Board in Award 1865 and 1866. The word 'necessary' therein is much more restrictive than 'convenient' or 'expedient'. To hold otherwise, as urged by Carrier, would nullify the declared purpose of the change. Under that Memorandum, in order to justify contracting out any work covered by the agreement, it must appear not only that it is in accord with prior practice but also that the circumstances warrant the exercise of managerial judgment as to the necessity therefor."

In view of the foregoing and Award No. 3633 on the same subject, the claim should have been sustained.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink