

Award No. 4259
Docket No. 3929
2-SLSW-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)

ST. LOUIS - SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the rules of the contract and a practice of many years standing when on December 8 and 9, 1959, certain repairs to Shop Mule No. 3 were assigned to employees of the Maintenance of Way Department.

2. That accordingly the Carrier be ordered to:

(a) Additionally compensate Machinist C. E. Landreth in the amount of 12 hours at the applicable rate of pay.

(b) Return this class of service to the Machinists' craft where for many years hence it has been assigned and performed.

EMPLOYEES STATEMENT OF FACTS: The St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, maintains a Maintenance of Equipment Repair Shop at Pine Bluff, Arkansas, where machinists are employed. Among those machinists is C. E. Landreth, hereinafter called the claimant, assigned to perform among other duties the work involved in this dispute.

At its Pine Bluff Mechanical (Maintenance of Equipment) Shop the carrier has a gasoline powered tractor (Shop Mule No. 3) for use of maintenance of equipment shop forces to facilitate the performance of work in the maintenance of equipment shop.

On December 8, 1959 this shop mule failed mechanically necessitating mechanical repair work being made amounting to twelve (12) hours of machinists' work. Instead of having this machinists' work performed in its Pine Bluff Maintenance of Equipment Shops, the carrier sent the machine to its Bridge and Building Roadway Shop and had the work performed by the bridge and building department employees.

The claimant was available and was experienced as he had in the past performed all mechanical repairs to such equipment and has in fact repaired

Award 2544 (Referee Schedler) denied claim of machinists and machinist helpers account of MofW employes used to dismantle, repair and reassemble roadway equipment. The findings read, in part:

"The claimants maintain that they have been deprived of an exclusive right to do this work as given to them by the applicable agreement. A careful examination of the agreement discloses no such exclusive right. The agreement provides for a rate when and if the work is performed by Maintenance of Equipment employes. The agreement does not say all such work will be performed by them. Furthermore, the record indicates that it has been the past practice to generally have these machines repaired by the manufacturers or Maintenance of Way employes. Also, the carrier has some 8 operating geographic regions and in 6 of those regions this work is performed by Maintenance of Way employes. The evidence offered by the Claimants simply does not support the claim that machinists are entitled to perform the work exclusively by practice. For many years part of the work has been partially farmed out to the manufacturers, or performed by employes other than machinists, according to the record in this case. We find from the record that the work involved herein is not under the terms of the agreement, work belonging exclusively to the Machinists, and that the carrier did not violate the agreement by assigning the work to others."

Award 3387 (Referee Bailer) denied claim of machinists due to carrier contracting work of overhauling dragline to outside concern. Findings read:

"The work in dispute consists of general overhaul or repairs to an off-track dragline operated by a mechanized gang composed of employes in carrier's Maintenance of Way Structures Department. Agreement Rule 52, which sets forth a definition of machinists' work does not specify the work involved in this dispute. The record conclusively establishes that employes in the machinist craft covered by the subject agreement have not traditionally performed all of the repair work to roadway equipment such as that involved in the instant case. A large portion of such work has been done by others, this practice having been in effect for many years. We must hold, therefore, that the agreement does not confer exclusive jurisdiction over the subject work to members of the machinist craft on this property."

In the present case the carrier has shown that, on this property, work in connection with equipment of the type involved has been performed by others, as well as mechanical department employes, for many years and that such work has never been considered as belonging exclusively to any craft.

Thus the employes have never had exclusive right to maintain and repair such equipment.

III

In conclusion the carrier respectfully submits that the facts outlined show the claim is not supported by the agreed 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 dis-

pute 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.

The carrier maintains extensive shop facilities at Pine Bluff, Arkansas, which include a Maintenance of Equipment Shop (hereinafter referred to as "MES") and a Roadway Machine Shop (hereinafter referred to as "RMS"). The MES is under the supervision of the Mechanical Department and the RMS is under the supervision of the Bridge and Building Department.

For many years, a number of gasoline powered tractors, so-called "shop mules", have been used within the shop area to pull trailers and equipment over driveways and service roads. In December, 1959, shop mule No. 3 which was assigned to the MES was repaired. The repair work consisted of installing a rebuilt starter, charging the battery, replacing one spark plug, and adjusting the generator. This work was performed by an employe of the RMS who is represented by the Brotherhood of Maintenance of Way Employees.

The Claimant C. E. Landreth who is employed as a machinist in the MES and who is represented by the International Association of Machinists filed the instant grievance in which he contended that the above described repair work belonged to the machinists' craft and should have been assigned to him. He asked for twelve hours' compensation at the applicable rate of pay. He also requested that the Carrier be ordered "to return this class of service to the Machinists' Craft." The Carrier denied the grievance.

1. Rule 43 of the applicable labor agreement on which the Claimant primarily relies reads, as far as pertinent, as follows:

"Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines (operated by steam or other power), . . . engine inspecting; . . . and all other work generally recognized as machinists' work on this carrier."

Because the work in question involved repairs to a gasoline powered engine the Claimant asserts that it should have been performed by a Machinist in accordance with the specific terms of Rule 43. We disagree. The term "engine" is not defined in the labor agreement. It is a generic term lacking in precision and plausible contentions can be made for different interpretations. In the broadest sense, the term connotes any machine that uses energy to develop mechanical power. See: Webster's New World Dictionary, College Edition, 1962, p. 481. In the absence of any indication to the contrary, we do not believe that the parties intended to place so encompassing a meaning upon the term "engine." Such an interpretation would confer exclusive jurisdiction upon the machinists' craft to maintain **all** equipment used at the Carrier's property for the sole reason that it is mechanically powered by an engine and, thereby, extend the coverage of Rule 43 far beyond any reasonable scope. The line demarcating repairs to engines which exclusively belong to the machinists' craft and those which do not can be determined only on the basis of the facts underlying each case. Custom and past practice are facts of special significance. See: Award 4043 of the Second Division.

Applying the above principles to this case, we have reached the following conclusions:

Tractors or shop mules are not specifically mentioned in Rule 43. Hence, we are of the opinion that repairs to them are covered by the Rule only if they constitute "other work generally recognized as machinists' work." See: Award 1808 of the Second Division. The record shows that machinists in the MES have repaired shop mules in the past. Yet this fact is of no decisive significance unless they have performed such work exclusively. See: Award 1110 of the Second Division. The available evidence does not permit such a finding. On the contrary, the evidence on the record considered as a whole reveals beyond doubt that shop mules, including those used in the Mechanical Department, have also been repaired by employees of the RMS on numerous occasions since 1947, or for more than twelve years prior to the time when the grievance under consideration arose. The record is devoid of any evidence or indication that the machinists in the MES or the Organization ever formally protested the repairing of shop mules by employees other than machinists, except in the instant case. Conceding that "some repairs to this class of equipment might have been made by B&B employees" (Organization's Rebuttal Brief, p. 3), the Organization denies, nevertheless, any knowledge thereof. However, RMS employees have not merely repaired shop mules, including those used in the Mechanical Department, in some or a few isolated instances but have done so in numerous instances during a considerable period of time. It is difficult to conceive how all those instances could have escaped the attention of the MES machinists as well as of the Organization. Their continued failure to file a formal grievance prior to the instant one can reasonably be construed only as acquiescence in and acceptance of the existing practice.

In summary, we hold that a consistent and long-continued practice known to and accepted by all interested parties has existed at the Carrier's Pine Bluff shops under which shop mules have been repaired either by machinists in the Maintenance of Equipment Shop or by employees in the Roadway Machine Shop. As a result, it cannot validly be said that such work has generally been recognized as work exclusively belonging to the machinists' craft within the purview of Rule 43. Accordingly, we hold that the Carrier did not violate the Rule when it assigned the repair work here in dispute to an employee of the RMS.

2. The Claimant also basis his claim on Rules 20 (Seniority), 34-1 (Assignment of Work), 42 (Qualifications), 44 (Machinist Apprentices), 45 (Machinist Helpers), and 103 of the labor agreement. A careful review of said Rules has satisfied us that they have no relevancy to the disposition of this case. The case stands or falls upon the answer to the question as to whether machinists have an exclusive right under Rule 43 to repair shop mules. For the reasons hereinbefore stated, the answer is in the negative.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4259

The majority is in error when they state:

"because the work in question involved repairs to a gasoline powered engine, the claimant asserts that it should have been performed by a machinist in agreement with the specific terms of Rule 43. We disagree. The term "engine" is not defined in the Labor Agreement. It is a generic term lacking in precision and plausible contentions cannot be made for different interpretations. In the broadest sense, the term connotes any machine that uses energy to develop mechanical power * * * "

Rule 43 is specific and unambiguous. We quote in pertinent part:

"Machinists work shall consist of laying out, fitting adjusting, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power) . . . engine inspecting * * * "

As you can see from the above rule, the term engine is defined as all inclusive within the meaning of the Agreement as a whole. This dispute involved work on an engine operated by gasoline. This rule has been in existence in the National Agreement for more than forty years and in this Carrier's agreement for almost as many years. The language definitely sets out that Machinists have the right to work on engines operated by steam and other power without exception within the confines of the contractual scope of the Shop Craft Agreement.

The facts of the record before this Board are so emphatically clear as to what work exactly is in dispute and to evade or circumvent the agreement by the majority stating in part:

"Tractors or shop mules are not specifically mentioned in Rule 43, we are of the opinion that repairs to them are covered by a rule only if they constitute "other work generally recognized as Machinists work."

does violence to the practical and reasonable application of the basic rules of contract or agreement. Logical men having knowledge of railroad practices, terms and agreement rules would understand the background and spirit and intent of the language in these rules and not have to resort to Webster's New World dictionary or other sources outside the society of railroading to know and understand the railroad agreement terminology.

As shown from the above, the Referee has placed such an absurd interpretation on Rule 43 which neither he nor the majority were called upon to do. Contrary to the many Board awards pointing out the wrong in singling out words (engine) and attempting to place a literal interpretation on same, this action here is a direct opposite to this Board's position on past awards. Therefore, this award should have been in the affirmative and we dissent.

E. J. McDermott

Robert E. Stenzinger

James B. Zink

C. E. Bagwell

T. E. Losey