

Award No. 4260

Docket No. 3814

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 EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the performance of Machinists' work on St. Louis Southwestern Railway's Locomotive 906 by employees of another Carrier is a violation of the agreement.

2. That Machinist O. E. Rye be paid twelve (12) hours pay at the straight time rate.

EMPLOYES STATEMENT OF FACTS: The St. Louis Southwestern Railway, hereinafter referred to as the carrier employs machinists at its Pine Bluff shops to perform among other things, the machining and/or restoring of wheels on diesel locomotives. Among the machinists employed at the carrier's shops in Pine Bluff is Machinist O. E. Rye, hereinafter referred to as the claimant.

On April 28, 1959, carrier's locomotive 906 arrived at the Pine Bluff engine house at 8:40 A.M., and was inspected by the regular engine inspector, Mr. L. E. Cook. Mr. Cook has been the carrier's engine inspector at the Pine Bluff engine house for over 20 years. His duties include the inspection and gauging of wheel flanges.

On April 28, 1959, without corrective repairs, locomotive 906 was switched into an assembly and dispatched powering a train bound for points beyond the carrier's own property.

Two days later on April 30, 1959, locomotive 906 returned to the Pine Bluff engine house and was again inspected by Inspector L. E. Cook. Where it is noted that wheels were no longer defective as they had been reconditioned by employees of the Texas and New Orleans Railroad Company. Not only were the defective wheels (2 and 4) machined to form proper contour by Texas and New Orleans Railroad employees, but the 1st and 3rd pair of wheels were also machine repaired, even though they were not defective.

Department, American Federation of Labor, mechanical section thereof."

Their seniority rights are shown by Rule 20, reading in part:

"20-1. Seniority as provided for herein shall be determined by the days elapsing after the date of last employment, including time lost by leave of absence, reduction in force, or other excused cause, confined to each point of employment separately, by the craft or subdivision thereof (the seniority of journeymen, helpers, and apprentices being separate as between themselves) and seniority list shall be posted as of January 1st of each year by the Carrier at each respective place of employment, and when so posted shall be binding and conclusive on all parties after the expiration of thirty (30) days or until changed by mutual agreement of the employees and the Carrier, to-wit:"

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

"34-1. None but mechanics or apprentices regularly employed as such shall do mechanic'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 on occasions cars needing heavy repairs are billed home empty for that purpose. The 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 employees 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. In this case it was determined by T&NO forces that the work here complained of was required to keep Diesel Unit 906 in service. In so doing they were not performing work to which claimant 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 waived right of appearance at hearing thereon.

The Carrier and the Texas and New Orleans Railroad Company (hereinafter referred to as "T&NO") are subsidiaries of the Southern Pacific Lines. For many years, locomotives have been transferred among the three railroads in order to keep them in service as much as possible. Under the arrangements made between the Carrier and the T&NO, the owning railroad is responsible for maintenance and repairs of its own locomotives. However, either railroad using a locomotive of the other one is obligated to make emergency repairs which are necessary or required by I.C.C. regulations to continue the locomotive in service until it is returned to its owner.

The Carrier maintains extensive shop facilities at Pine Bluff, Arkansas, for the repairing of locomotives. On April 28, 1959, the Carrier's Diesel unit 906 arrived at Pine Bluff and was inspected by engine inspector Cook. He reported, among other things: "Flanges on R #2 and both back wheels 1½" high R. F. 1-15/32 906." However, General Roundhouse Foreman Simpson re-inspected the unit and found the flanges to be less than the maximum height permitted by I.C.C. regulations and the wheels in serviceable condition. The unit was then combined with other Diesel units to handle a train to San Antonio, Texas, which is in the territory of the T&NO. Upon arrival at San Antonio on April 29, 1959, T&NO employes determined that three pairs of wheels had to be reconditioned to keep the unit in service, and they performed such work. The unit returned to Pine Bluff on April 30, 1959.

The Claimant, O. E. Rye, has been employed as a machinist at the Carrier's Pine Bluff shops. He filed the instant grievance in which he contended that the above described work should not have been performed by T&NO employes but should have been assigned to him. He requested compensation in the amount of twelve hours at the pro rata rate. The Carrier denied the grievance.

In support of his claim, the Claimant primarily relies on Rule 43 of the applicable labor agreement which contains a detailed description of machinists' work. For the reasons hereinafter stated, we are of the opinion that neither Rule 43 nor any of the agreement sustains the grievance at hand.

1. During the handling of this grievance on the property, the Organization complained that T&NO employes had reconditioned or repaired three pairs of wheels of diesel unit 906 (see: Organization Exhibit "D"; Carrier's Exhibits 1, 3, and 5.) Contrary thereto, the Organization contends in its submission brief that four pairs of wheels were repaired by T&NO employes. The Carrier asserts that its records do not show that more than three pairs were repaired. No evidence supporting the Organization's claim that a fourth pair was repaired has been offered. Thus, we find that T&NO employes only repaired three pairs of wheels.

2. The Organization does not contest the joint use of locomotives by the Carrier and the T&NO (see: Organization's Rebuttal Brief, p. 2). It also does not object to the performance of repairs to locomotives owned by the Carrier but used by the T&NO by employes of the latter if such repairs are

required by I.C.C. rules and regulations prior to movement (see *ibid.*, p. 12).

However, the Organization disputes the Carrier's right to enter into exchange agreements with another railroad if such an agreement abrogates or abridges the labor agreement between the parties. In this connection, the Organization accuses the Carrier of having dispatched unit 906 to San Antonio for the express reason that the repairs in question could be made quicker and more economically by T&NO employees at San Antonio than by its own employees at Pine Bluff (see: *ibid.*, p. 9). The narrow question posed by this case is then whether the Carrier deliberately transferred the work under consideration in violation of Rule 43 of the labor agreement. The answer is in the negative. The evidence on the record considered as a whole convincingly proves that the three pairs of wheels here involved were in serviceable condition before unit 906 left Pine Bluff. General Roundhouse Foreman Simpson explicitly so certified (see Carrier's Exhibit No. 8). The record discloses that Simpson has been in the Carrier's service since 1924, has been a foreman since 1936, and has occupied the position of general roundhouse foreman since 1951. Hence, we fail to see that the Carrier acted in bad faith when it relied on Simpson's judgment and not on that of engine inspector Cook who is subordinate to the former. The available evidence also reveals that T&NO employees found that the three pairs of wheels were no longer serviceable after unit 906 had arrived at San Antonio and required repairs prior to return thereof to Pine Bluff. There is nothing in the record which would adequately contradict this finding.

In summary, we hold, on the basis of the specific facts underlying this case and without setting a precedent for future cases, that the Carrier did not violate Rule 43 or any other Rule of the labor agreement.

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 4260

The majority admit that TN&O employees did perform work on St. Louis and Southwestern Railroad diesel locomotive (unit 906), and the record shows that the St. Louis Southwestern Railroad Company agreement with System Federation No. 45 includes the work, in the instant case, as machinists work. (See Rule 43 and 34-1).

They then depart, in error, from the basic principles of contractual rights and expectancies under the agreement and condone the unilateral action of the carrier in contracting out the work to another carrier.

If work contractually assigned to a given craft may be contracted out whenever such practice becomes less expensive or more convenient to the carrier, the jobs' security and economic gains the employees have achieved through collective bargaining becomes ephemeral indeed.

Based on the foregoing the majority is in error, and this award should have been in the affirmative.

We dissent.

R. E. Stenzinger

E. J. McDermott

C. E. Bagwell

T. E. Losey

James B. Zink