

Award No. 4426

Docket No. 4350

2-SP (PL)-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier's arbitrary unauthorized action in contracting-out the work of reconditioning and repairing twenty-four (24) diesel engine cylinder liners from its Sacramento General Shops, Sacramento, California, consisting of reboring, grinding, sizing and honing to oversize diameters, testing and packaging, to an outside firm identified as the Industrial Hard Chrome Plating Corporation, Emeryville, California, during the period September 12, 19 and 21, 1961, was improper, in violation of the collective bargaining contract.

2. That accordingly, the Carrier be ordered to additionally compensate Machinist R. Richardson in the amount of forty-eight (48) hours at pro rata rate, and Machinist D. W. Walker in the amount of twelve (12) hours at pro rata rate (said Machinists hereinafter referred to as claimants), account Carrier depriving claimants and other machinists subject to all terms of the parties contract the right to perform work coming within the scope of said contract, when the work referred to hereinabove was contracted to, and was performed by employes of above named firm not subject to any provisions of the controlling agreement.

EMPLOYES' STATEMENT OF FACTS: The records establish that the work involved in this dispute—reconditioning of diesel engine cylinder liners—consisting of in particular, reboring, grinding, sizing and honing to oversize diameters, testing, packaging and marking the reconditioned oversize, has been consistently performed by claimants and other machinists employed in carrier's Sacramento general shops since diesel engine repair procedures were established in said shop in the year 1948. There is no dispute in the record regarding this fact.

Procedures and facilities used to perform the involved repair work at carrier's Sacramento shops, including the knowledge and skill of claimants and other machinists, provided the carrier with precision reconditioned parts, efficient performance, extended the service life of such parts, as well as de-

Memorandum "A", it is obvious, is jurisdictional in scope and is applicable only to the crafts and classes of carrier's employes covered by the current agreement. The claim here under consideration does not involve a dispute between any of the shop crafts covered by the current agreement and does not restrict carrier from having specialized work performed as herein indicated. It has long been recognized by this and other Divisions of the National Railroad Adjustment Board there are exceptions to the general rule that the carrier may not contract to others work which is embraced in collective agreements with its employes. One is where as here the carrier does not have equipment necessary to perform specialized work required for proper and efficient operations and when such equipment is so expensive that the work to be performed would not justify its purchase.

It is clear from this record that claimants are claiming work which carrier is not in a position to provide. To sustain the employes' position herein would force carrier to one of two remedies: (1) discontinue sending cylinder liners to an outside concern for proper honing and thereafter have the work performed in its Sacramento general shops with equipment available, resulting in inferior work which in turn will reduce the life expectancy of cylinder liners, as well as increase the hazard of delays, failures and inefficient operation of diesel locomotives using said cylinder liners in service; or (2) purchase of precision machine of the type used by the Industrial Hard Chrome Plating Company at a price approximating \$125,000, and install and maintain said machine at its Sacramento general shops to be used but a fraction of its capacity for the work forming basis of this claim. It is carrier's position that neither of the foregoing remedies are required by the provisions of the current agreement or any other authority.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it 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.

In 1961 on September 12, 19 and 21 a total of twenty-four Alco Model 539 diesel engine cylinder liners were sent to the Industrial Hard Chrome Plating Corporation of Emeryville, California, for repair and reconditioning. The latter work consisted of grinding, sizing and honing the cylinder liners.

The Claimants, R. Richardson and D. W. Walker, are both machinists working at Carrier's shop at Sacramento, California. The former's claim is for 48 hours at pro rata pay, while the latter's claim is for 12 hours at pro rata pay.

The Organization's principal contentions are that:

- 1) The Carrier's action violates Rule 57 and Memorandum A;
- 2) the work in question has been performed by Carrier's Machinists in said shop since 1948;
- 3) the Carrier's Machinists have the skill and the necessary equipment to do satisfactorily the work involved.

The Carrier claims that:

- 1) the sole reason the cylinder liners were sent out for honing was because the Carrier's shop methods were not satisfactory;
- 2) the Carrier's methods contributed to the failure of Diesel locomotives while in service;
- 3) the Carrier lacked the costly (\$125,000) machine precision instrument the Industrial Hard Chrome Plating Corp. had and its (Carrier's) need for such a machine did not justify the capital investment;
- 4) the life expectancy of cylinder liners bored or honed in the old manner was 6 to 8 years—compared to 12 years when done by the precision equipment method.

The pertinent provisions of the key rules involved read as follows:

Rule 57. "Machinists' work shall consist of * * *, fitting, adjusting, * * * boring * * * grinding of metals used in * * * assembling, maintaining, dismantling and installing locomotive engines (operated by steam or other power) * * * machine grinding * * * the operation of all other machines used in such work * * *."

Memorandum "A". " * * * it is agreed that existing practices will be continued, unless and until otherwise decided by conference and negotiation between the General Chairman involved, and the General Superintendent of Motive Power, * * *."

The record establishes the following facts:

- 1) the Carrier's Machinists have done the work involved since 1948;
- 2) the Carrier's Machinists have the skill and equipment to do the work involved;
- 3) the work in question belongs to the Machinists;
- 4) the pertinent provisions of the controlling Agreement give the work in question to the Machinists.

The facts cited above are persuasive and compelling in favor of the organization's position.

It is axiomatic that work covered by an agreement cannot be contracted out. It is also true that where a Carrier can establish that its employes do not have the facilities, equipment or skill to do the work involved—it (Carrier) can contract out work. However, in the instant case, the record failed to support the Carrier's position.

Accordingly, the Board must rule in favor of the Organization and sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.