Award No. 4531

Docket No. 4473

2-NWP-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

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

NORTHWESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement the Carrier's arbitrary unauthorized contracting-out of Machinists' work, consisting of removing a defective starting motor and installation of a new unit on Dump Truck NWP 053 on August 3, 1962, to an outside firm identified as the Comanche Chevrolet Garage, Santa Rosa, California, was improper, in violation of the collective bargaining contract.

2—That accordingly, the Carrier be ordered to additionally compensate Machinist John Gregorowicz (hereinafter referred to as claimant), in the amount of four (4) hours additional compensation at the pro rata rate of pay, account Carrier depriving claimant 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 who are not subject to any terms of the controlling agreement.

EMPLOYES' STATEMENT OF FACTS: The work here involved has been properly recognized by agreement and practice as work of the machinist craft coming within the scope of the current agreement. There is no dispute in the record regarding this fact.

It is an established fact, not subject to dispute, that in recognition of applicable provisions of the current agreement, it has been a consistent accepted practice for machinists subject to the terms of said agreement, to perform the work here involved on carrier's automobiles, trucks and other automotive equipment at carrier's shops, including on-line of road. No dispute appears in the record regarding this fact.

Claimant including another machinist were at Ignacio, California on August 3, 1962 waiting for Dump Truck NWP 053 to arrive at said Point with a Bull Dozer, which was being towed to Ignacio by said dump truck for loading on a flat car, the loading of which was to be performed by claimant

of painting and some heavy repair. The organization has made no claim to the painting but asserts the exclusive right to servicing and repair of these over-the-road trucks both from recognized practice and under Rule 5-F-1, which reads:

> 'None but mechanics or apprentices regularly employed as such shall do work specified as that to be assigned to fully qualified mechanics.'

and also under the Graded Work Classification of the agreement.

Carrier has shown specifically in its submission that machinists have not exclusively performed such repair and servicing of Maintenance of Way vehicles in the past and that it has frequently been contracted out. Neither Rule 5-F-1 nor the Graded Work Classification provision of the agreement is a scope rule giving exclusive right to work. Awards 1957, 2544 and 2545."

In each of the above awards, your honorable board found that machinists had no exclusive right either by agreement or by practice to the work of repairing over-the-road vehicles owned by the carriers involved, and denied the employes' claims.

The instant dispute is similar as to the facts and rules, and it is clear that your Honorable Board must consistently make the same finding herein and deny the claim.

To summarize, the carrier has definitely established the fact that for 27 years the carrier's over-the-road automotive equipment has been repaired and maintained by:

1. Outside commercial garages
2. Southern Pacific maintenance of way shops
3. Traveling motor car repairmen
4. Machinists in carrier's maintenance of way shops

Carrier has also shown that the rules referred to by the petitioner in support of its claim do not give machinists the exclusive right to repair and maintain over-the-road automotive equipment.

The carrier has established the fact that the Petitioner in the past has recognized not only the practice but the fact that there were no provisions in the agreement giving machinists the exclusive right to repair and maintain over-the-road automotive equipment.

In past awards, this board has denied claims which were similar to the instant dispute.

CONCLUSION: The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim, if not dismissed, 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 Division finds that the Petitioner's contention is not well founded in maintaining that the Carrier violated the current Agreement when it utilized an outside garage to remove a defective starting motor and install a new one on a dump truck.

The Division arrives at this conclusion, in part, because it does not find any support for the claim in the express provisions of either Rule 56, Rule 30, Rule 32 or the Memorandum "A" dated November 1, 1942.

Rule 56, the "Classification of Work" rule, relied upon heavily by the Petitioner, in its relevant portion states:

> "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) * * * ."

Upon analysis of the Rule however, the Division concludes that it does not give the Organization the exclusive right to repair automotive equipment. The Division can find no support for the Organization's contention that the word "engine" in the Rule contemplated automotive equipment powered by a gasoline engine. The contention is too remote because engine is a generic term and is too broad to have specific relevance to the equipment in issue in this claim. The Division has already ruled on this matter in Award No. 4259.

In addition there are other facts of record which militate against the Division holding that Rule 56 bestows exclusive jurisdiction upon the Petitioner to repair automotive equipment. These facts are that the Carrier has utilized equipment since 1937 and has employed four sources to repair said equipment. These sources have been the Southern Pacific's Maintenance of Way Shops, the Carrier's Traveling Motor Car Repairmen, outside garages, and the Maintenance of Equipment Department.

In 1951, the Organization's General Chairman wrote the Carrier asking that consideration be given members of the Organization for automotive repair work. This request was made notwithstanding the fact that Rule 56 was part of the Agreement executed in 1942, and the Carrier had been using automotive equipment since 1937. Such precatory action by the General Chairman does not indicate the assertion of an exclusive contract right under a pre-existing valid Agreement.

The Division also finds that the exhibits attached to the Petitioner's Submission purporting to show its exclusive right to perform the work are not in point because these exhibits do not refer to automotive equipment.

In brief, neither the present contract nor past practice support the instant claim.

The Division believes that its present finding that the Petitioner does not

have the exclusive right to perform the work in issue is consonant with its prior Awards dealing with same question. See Awards Nos. 1808, 2250, 3663, 4292.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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