

Award No. 4724
Docket No. 3547
2-SP(PL)-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 assignment of Maintenance of Way Employees to the work of dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and outlying points is improper.

2. That accordingly the Carrier be ordered to assign the aforesaid work to machinists.

EMPLOYES' STATEMENT OF FACTS: The carrier has for several years assigned machinists coming within the scope of the motive power and car department agreement to perform the work of dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and outlying points, also, during this period employees covered by the maintenance of way agreement were assigned to perform the work involved in this dispute.

This case was handled from bottom to top with carrier officials who all declined to adjust the dispute.

The agreement effective May 1, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYES: In consideration of the foregoing statement of dispute and the statement of facts, the division is called upon to resolve whether the carrier, after having negotiated the current collective agreement, and agreed to therein, effective May 1, 1948, that machinists "employed in the Maintenance of Way Department", subject to the current agreement, would perform the work of ". . . assembling, maintaining, dismantling . . . pumps, . . ." can now entirely disregard such agreement provisions, and assign such work to employees other than machinists who come within the scope of an agreement, the provisions of which make no reference whatever to the work here in dispute.

The foregoing statement of dispute is supported in its entirety by the provisions of the current collective agreement; this fact cannot be denied, because:

Irrespective of the fact Rule 40 of the work equipment-roadway machines agreement and the classification of work rules in the other agreements do make reference to the work of dismantling, repairing and assembling pumps in the respective departments, the carrier insists there cannot be any basis under any of said rules for the petitioner's contention in this docket that the work in connection with the performance of that work in the water service department should be diverted from the employees covered by the maintenance of way employees agreement, a service which has traditionally been performed by them, and be assigned to machinists covered by any or all of the agreements with System Federation No. 114.

CONCLUSION: Having shown that certain employees involved in and having an interest in this dispute should be notified and permitted to become parties to this docket and afforded an opportunity to appear before the division and be heard, the carrier suggests it to be the duty of this division to give due notice of this proceeding and any hearing or hearings therein to the maintenance of Way employees who are involved in the dispute, and, pending such notice, to suspend all further proceedings in this docket.

If, however, the board elects to proceed in this docket without giving due notice of any hearing or hearings therein to the maintenance of way employees, who are involved in this dispute, the carrier submits it has conclusively established that the claim in this docket was not presented or progressed in accordance with the usual manner up to and including the chief operating officer of the carrier delegated to handle such disputes, and respectfully submits it should be dismissed.

Provided the Board, nevertheless, elects not to dismiss same, the carrier then requests the claim be denied on the showing it has made that the claim in its entirety is without merit.

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 employees 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 were given due notice of hearing thereon.

There are three agreements between the Carrier and System Federation No. 114 relating to machinists;—one covering those in the Stores Department, one for those in the Motive Power and Car Departments, and one for those in the Work Equipment—Roadway Machines and Scales Sub-Departments of the Maintenance of Way Department. This claim arises under the latter.

In their Submission the Employees allege:

"The Carrier has for several years assigned Machinists coming within the scope of the Motive Power and Car Department Agreement to perform the work of dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and outlying points, also, during this period Employees covered by the Maintenance of Way Agreement were assigned to perform the work involved in this dispute."

Thus they do not allege that this pump work has ever been done by machinists in their sub-departments; on the contrary they state that it has been done by Maintenance of Way mechanics and by Motive Power and Car Department machinists.

In its Submission (pp. 3-6) the Carrier alleges:

"3. The principal repair shops of the carrier's Western Division are located at West Oakland, California. Included with the other repair shop facilities at this location, are:

(a) A Water Service Repair Shop, a part of the Maintenance of Way Department, and under the supervision of the Water and Fuel Supervisor of the carrier's Western Division. Employees of this shop, namely, Water Service mechanics and their helpers, coming under the provisions of an agreement between the Southern Pacific Company (Pacific Lines) and the employees represented by the Brotherhood of Maintenance of Way Employees, effective September 1, 1926, hereinafter referred to as the Maintenance of Way Employees Agreement, in addition to other duties, have, by custom and practice, since the effective date of that agreement, and prior thereto, performed the work of dismantling, repairing and assembling water pumps and fuel pumps from all points and shop yards on the carrier's Western Division, in addition to performing such work at the points where such pumps are in service, except that such machine work necessary on parts for repairs to water and fuel pumps, as the Water Service Repair Shop is not equipped to perform is and has been sent to the System Maintenance of Way Repair Shop at West Oakland.

(b) A System Maintenance of Way Repair Shop, the employees of which come under the provisions of an agreement between Southern Pacific Company (Pacific Lines) and its employees in the Maintenance of Way Department (Work Equipment-Roadway Machines and Scales Sub-Departments) represented by System Federation No. 114, Railway Employees Department, A. F. of L., Mechanic Section Thereof, effective May 1, 1948, hereinafter referred to as the Work Equipment-Roadway Machines Agreement. Employees in this shop perform the work involved in making repairs to work equipment, roadway machines and scales, as indicated in the title of the agreement stated above, sent into that shop for repairs from any of the carrier's operating Division, including such units of work equipment and roadway machines as earth moving equipment, (including shovels, scrapers and bulldozers) rail-laying equipment, portable air compressors, electric welding units, locomotive cranes, automobiles, auto-trucks, etc., as well as track and station scales.

In addition, when necessary to have such machine work performed on parts for water and fuel pumps being repaired at the Water Service Repair Shop at West Oakland, as the Water Service Repair Shop is not equipped to perform, such machine work is performed in the System Maintenance of Way Repair Shop at West Oakland, and the machined repair

parts returned to the Water Service Repair Shop for assembling. On occasion such pumps requiring extensive repairs, which the Water Service Repair Shops are not equipped to perform completely, are sent to the System Maintenance of Way Repair Shop for overhauling.

(c) A locomotive repair shop, the employees of which come under the provisions of * * * the Motive Power and Car Departments Agreement.

4. On April 18, 1950, the Local Chairman, Lodge 1117, I.A. of M., addressed a letter to the foreman of the Maintenance of Way Department Motor Car Repair Shop at West Oakland, specifically referring to repairs being made to water pumps, fuel pumps and other like equipment at the Maintenance of Way Shops at West Oakland by employees coming under the Maintenance of Way Employees Agreement, and requesting performance of such work by employees covered by the Maintenance of Way Employees Agreement be discontinued and such work be assigned to employees covered by the Work Equipment-Roadway Machines Agreement. Such request was denied * * *."

In their Rebuttal the Employees say (p.2):

"The presentation made by the Carrier under caption 'Statement of Facts' beginning on page 2 and ending on page 6, is accepted as a reasonable description of facts involved in this dispute, with the exceptions noted below:"

The exceptions do not relate to the above allegations of the Carrier or place any of them in issue.

The Carrier further alleges in its Submission (pp. 18-21):

"As previously indicated (see page 3 Carrier's Statement of Facts) Water Service mechanics and helpers at West Oakland, and other locations where employed, coming within the scope of the above referred to article (Article I) of the agreement covering Maintenance of Way employees, have by long custom and practice since its effective date, and prior thereto, performed work of installing, dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and at outlying points in the service of the carrier, and have continued to perform such work to the present time, irrespective of whether such dismantling, repairing and assembling is performed at the location where pumps are installed or the pumps or parts thereof are brought to the Water Service Repair Shop at West Oakland or other Water Service repair shops. The exception to Water Service mechanics and helpers performing all the work involved in repairs to such pumps taken into Water Service shop for repairs, or repaired in place at location installed, is when parts of pumps require such machine work as Water Service shops are not equipped to perform, in which event such parts machine work is performed currently in the System Maintenance of Way Repair Shop at West Oakland for such parts as need to be machined for pumps of the carrier's Western Division, and in the past, prior to the System Maintenance of Way Repair Shop at West Oakland being equipped to perform such machine work, by employees in the locomotive repair shop at West Oakland. On other operating Divisions of the carrier, Water Service mechanics and

helpers have since and prior to September 1, 1926, installed, dismantled, repaired and assembled water and fuel pumps on their respective operating Divisions, with exception of performing such machine work on parts of pumps taken into Water Service shops for repairs or repaired in place at location installed, as Water Service shops were not equipped to perform. Such machine work on such Division is and has been performed in locomotive machine shops of the respective carrier's operating Division.

The General Chairman of the International Association of Machinists on this property has long known that work of dismantling, repairing and assembling has been the recognized work of mechanics and helpers coming within the scope of the Maintenance of Way Employees Agreement, effective September 1, 1926. As conclusive evidence of such fact, attached hereto as Carrier's Exhibit 'B' is copy of a letter dated July 12, 1943 signed by Mr. D. M. Brown, the carrier's General Superintendent Motive Power, addressed to Mr. C. J. Born, former General Chairman, International Association of Machinists, on this property, concerning a verbal grievance relating to repairs to a fuel pump at Los Angeles, California, performed by Water Service Department employees coming under the Maintenance of Way Employees Agreement, effective September 1, 1926. In that letter the former general chairman was advised the maintenance and repairs to the pump in question comes under the jurisdiction of the Water Service Department. The general chairman took no further exception to the advice furnished him July 12, 1943.

The carrier has shown that since September 1, 1926 and prior thereto, Water Service mechanics and helpers coming under the Maintenance of Way Employees Agreement have performed the work of assembling, dismantling and repairing water pumps and fuel pumps brought to Water Service shop for repairs, as well as performing similar work on pumps installed at the numerous locations on the carrier's property. Such work has been recognized for many years as the work of a group of employees designated as Water Service mechanics and helpers. The petitioner seeks to have the rights of such Water Service employees to perform the work they have performed over a period of a great many years by custom, practice and an agreement right, entirely ignored and disregarded, and seeks to deprive that group of Water Service Department employees of the work they have traditionally performed and henceforth have such work performed by another class of employees covered by another agreement or agreements."

In their Rebuttal the Employees do not deny those allegations. They make only the general statement that the Carrier "fails to produce any factual evidence in support of its position", ignoring the point that proof of undisputed facts is unnecessary, and ignoring also the Carrier's reference to the 1943 incident which was terminated by Carrier's Exhibit "B" mentioned above.

On the contrary, they say in their Rebuttal (p. 8) that notwithstanding the facts and contract provisions "the Carrier has consistently declined to assign this work to machinists employed in either of the three Departments covered by the three referred to Agreements."

Thus the Employees in these sub-departments of the Maintenance of Way Department covered by the Agreement do not contend that they have ever done

this work, or that it has ever been work of their sub-departments, and they do not deny that Water Service mechanics and helpers were performing it before, as well as after, the effective date of this Agreement.

Their answer is only that this kind of work is machinists' work, that it is specified in the three System Federation No. 114 agreements, and that it is not specified in the Maintenance of Way Agreement, all of which are true but do not meet the issue. There is no work classification provision in the Maintenance of Way Agreement, but only an employe classification so that under established principles past practice must be examined to determine the work covered.

This kind of work is expressly included in Section 40 of the Agreement, and also in Section 53 of the Stores Department agreement and in Section 57 of the Motive Power and Car Departments agreement,—in each instance, obviously covering only work of employes in the departments or sub-departments named in the particular agreement.

No essential question of fact is thus presented; for it is affirmatively stated by the Employes that for many years this work has been done by "assigned Machinists coming within the scope of the Motive Power and Car Department Agreement" and also by "Employes covered by the Maintenance of Way Agreement," and it is not denied that the latter were performing it when this Agreement became effective; on the contrary, it is affirmatively alleged that "the Carrier has consistently declined to assign this work" to the Claimants.

The issue thus presented is not whether the Carrier has removed this work from the instant Agreement and given it to Maintenance of Way mechanics, but whether the Agreement has taken it from the latter and given it to the Claimants. Since it has never been work of the sub-departments covered by the Agreement, the answer must be in the negative.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1965.