

Award No. 5048

Docket No. 4763

2-GN-MA-'67

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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. Under the current agreement, other than regularly assigned Machinist Employees were used to perform Machinists' duties when dismantling an air compressor.

2. Accordingly, the Carrier be ordered to compensate Machinist Lavern A. Oszman and Machinist Helper Henry Johnson in the amount of eight hours each at the punitive rate of time and one-half account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains train service yards, hereinafter referred to as the Union Yards, which is the locality of the instant dispute and located in the Minneapolis-St. Paul midway area. The Union Yards are located approximately fifteen (15) minutes travel time from both the Minneapolis Great Northern Roundhouse and the St. Paul Great Northern Machine and Diesel Shops where machinists are regularly employed and from which machinists are sent throughout the yards to perform machinists' work.

The Union Yards are designed to service freight trains which includes yarding and breaking up incoming trains and assembling trains for destination west of the Twin Cities. There are carmen, carmen helpers, laborers and blacksmiths regularly employed at this location. Due to the type of work being performed at the Union Yards, it is necessary to maintain an air compressor, which is the subject matter of the instant dispute. This pneumatic machine is used to build up adequate air pressure in the assembled freight trains before departure, and also is used for supplying air pressure for repairs on cars.

On April 17, 1963, pipefitters from the carrier's engineering department dismantled the complete low pressure portion of the air compressor. The

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to assign work in whatever manner is necessary or desirable, unless the power to make such decisions has been limited by law or by some clear and unmistakable language in the collective bargaining agreement.

2. The organization bears the burden of proving that it has secured the exclusive right to perform the work involved in this case.

3. There is no language in Rule 49 or any other rule or agreement which supports the organization's contention that machinists had the exclusive right to remove the low-pressure cylinder from the Ingersoll-Rand Air Compressor at Union Yard on April 17, 1963.

4. Previous similar claims by the Organization were rejected by this board in Awards Nos. 3956 and 3957.

5. The work in question did not require the skill, training or experience of a machinist mechanic as contemplated by Rule 48.

6. The assignment of the work in question was consistent with past practice.

7. Even if this work could properly be requested by the petitioning organization, it must proceed under Rule 94 and no penalty claims may be awarded.

For the foregoing reasons, the carrier respectfully requests that this claim 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.

Rule 42 (a) provides that:

"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."

Rule 49 provides in part that:

"Machinists' work shall consist of * * * dismantling * * * pneumatic * * * machinery, * * *

There is no question that the Ingersoll-Rand air compressor constitutes pneumatic machinery and that it was partially dismantled by others than machinists. Claim 1 must therefore be sustained. Awards 170, 726, 1874, 2315, 3657, 4547 and 4725.

The Claimants named in Claim 2 appear to be the wrong claimants to receive payment because of the violation, since according to the record they were working at their regular assignments and lost no time because of it. Therefore Claim 2 must be denied.

AWARD

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.