Award No. 17224
Docket No. MW-17860

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on or about October 27, 1966, it assigned the work of reconditioning the engine from Speed Swing Crane No. 664 to outside forces. (System Case No. WM-15-66/SG-12-66)

(2) Motor Car Repairman Paul Schramm now be allowed pay at his time and one-half rate for the same number of hours consumed by the outside forces in the performance of the work referred to in Part (1) of this claim."

EMPLOYES' STATEMENT OF FACTS: The claimant had established and held seniority as a motor car repairman within the Scales and Work Equipment Sub-department on the Gary Division. He was regularly assigned and working as such at the motor car repair shop at Gary, Indiana.

On or about October 27, 1966, Speed Swing Crane No. 664 developed engine trouble and was sent to the motor car shop at Gary, Indiana, where the diesel engine was removed by motor car repairmen. In compliance with instructions issued by the Carrier, the engine was then sent to the Indiana Central Truck Parts Company, Gary, Indiana. Employes of that company, none of whom hold any seniority under the Agreement, reconditioned and returned the engine to the motor car shop on November 2, 1966. The engine was subsequently re-installed in the crane by motor car repairmen.

The motor car repairmen, including the claimant, assigned to the Gary Motor Car Repair Shop were available, willing and fully qualified to perform the work of reconditioning the diesel engine but were not permitted to do so.

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute revised and reissued August 1, 1952, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits not reproduced)

"(a) All work in connection with maintenance, repair or dismantling of motor cars, motor vehicles and various other machines used in the Maintenance of Way Department, **except extensive repairs to cranes and similar equipment which cannot reasonably be made in Maintenance of Way Department shops,** . . . shall be the work of the Scales and Work Equipment sub-department."

The November 8, 1939 tripartite Agreement set forth on pages 55 through 59 of the Organization's above referred to Agreement provides in pertinent part:

"GENERAL:

"It is understood where reference is made in this understanding to fabrication of parts of iron, tin, sheet metal or other material or metals, that no such reference shall in any way prohibit the Railway Company from purchasing such parts from outside manufacturers, **and that the right of the company to have repair work performed by outside contractors, agencies, etc. is not disturbed.**"

Finally, the last paragraph of Rule 62, as repeatedly affirmed by your Board, specifically provides that:

"Rule 62. . . .

"Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

(Exhibits not reproduced)

OPINION OF BOARD: This case arose when Carrier on or about October 27, 1966, caused the engine on Speed Swing Crane No. 664 to be reconditioned by the Indiana Central Truck Parts Company of Gary, Indiana. Claimant contends this work should have been performed by Carrier's Motor Car Repair Shop at Gary.

Claimant contends that Carrier therefore violated Rule 56 of the Agreement which specified in those parts pertinent to this dispute:

"(a) All work in connection with maintenance, repair or dismantling of motor cars, motor vehicles and various other machines used in the Maintenance of Way Department except extensive repairs to cranes and similar equipment which cannot reasonably be made in Maintenance of Way Department shops, the inspection and maintenance of scales, and the operation of Maintenance of Way Department highway trucks and buses only which are used exclusively for the transportation of material and/or the transportation of employes of the Maintenance of Way Department shall be the work of the Scales and Work Equipment sub-department.

"(d) An employe who is capable in and assigned to the inspection and repair of motor cars, motor vehicles and various other machines used in the Maintenance of Way Department shall constitute a motor car repairman.

"(g) All work described under Rule 56 III shall be performed by employes of the Scales and Work Equipment sub-department, except as provided in Memorandum of Understanding dated November 8, 1939, and agreement with Shop Crafts effective April 3, 1922."

Carrier defends in the first instance by alleging Claimant failed to establish a prima facie case because Claimant did not prove that Rule 56 III gives exclusive right to perform work of this nature to motor car repairmen in Carrier's Scales and Work Equipment Sub-department. Carrier contends that Rule 56 III does not give motor car repairmen preferential rights over other employes or outside workers in the performance of this work.

We believe that Claimants have established a prima facie case and that Rule 56 III does give exclusive right to perform the work in question to motor car repairmen. The only exceptions are: a) where there is extensive repairs to cranes . . . which cannot reasonably be made in Maintenance of Way Department Shops; or, b) in Memorandum of Understanding of November 8, 1939, and Agreement with Shop Crafts effective April 3, 1922. Neither exception is applicable in this dispute. In the first place, the preponderance of evidence indicates that the work involved here was not so extensive that it could not be performed in the Gary shop. Secondly, the work involved here does not include fabrications as excepted in the Agreements of 1939 and 1922.

If neither exception is valid, then Rule 56 III is clear in giving exclusive right to Claimant to perform the work. Certainly the Organization can relinquish this exclusive right by expressed assent or implied assent as evidenced by past practice. However, that is not the case here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.

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