Award No. 3816
Docket No. 3277
2-CRI&P-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the building, assembling, dismantling and repairing of diesel engines is Machinists' work under the current Agreement.

2. That on May 23, 1955 the Carrier transferred the overhauling and repairs of one 16 cylinder diesel engine, serial number 52-D-150 from its shops at Silvis, Illinois to the Electro-Motive Division of General Motors Corporation.

3. That, accordingly, as a penalty for the aforementioned violation, the Carrier be ordered to compensate Machinists G. H. Kortum and F. G. Ehlers an equal number of hours, at the time and one-half rate, to correspond with the number of hours of labor charged to the Carrier by the Electro-Motive Division of General Motors Corp. for the overhauling and repairs to this diesel engine.

EMPLOYE'S STATEMENT OF FACTS: This carrier maintains at Silvis, Illinois its largest diesel locomotive repair shop, which is fully equipped to make any and all repairs to diesel locomotives and diesel engines, including the component parts thereof. This shop consists of a general erecting floor and overhaul department for diesel engines and appurtenances, such as compressors, governors, fuel pumps, injectors, cylinder heads and all other parts which are completely dismantled, repaired and assembled, in addition to a running repair department.

Machinists are regularly assigned at Silvis Shop to completely overhaul all types of diesel engines, including the 16 cylinder, E.M.D. engine referred to in this claim, and such rebuilding and overhauling is performed daily in this shop.

This carrier has recently taken the arbitrary and untenable position that despite any provision in the agreement with its employes, it has the right to farm out or contract out the repairs to any equipment to an outside company or back to the factory whenever it sees fit, even though identical engines or equipment is being repaired and overhauled daily in its shop, on the apparent theory that the carrier may save money by contracting out the work and permitting the work to be performed by employes of a company other than this carrier.

The carrier contends that the diesel engine here involved was sent in to Electro-Motive Division of General Motors and was exchanged for a similar diesel engine which had been sent to Electro-Motive Division by another railroad and which Electro-Motive Division had overhauled.

This may be true, however, when this carrier received this old but rebuilt diesel engine from Electro-Motive Division in exchange, this carrier was charged by Electro-Motive Division for the cost of material and labor necessary to completely rebuild **the engine which this carrier had sent to Electro-Motive Division.** The net result was the same as sending a specific engine to Electro-Motive Division having them overhaul that particular engine and returning that rebuilt engine back to the carrier. This deprived the carrier's employes of performing work which was theirs under an agreement and could result, if permitted to continue, in many of this carrier's employes being laid off and their work "farmed out" to employes of other companies.

Notwithstanding the complete facilities available in its own shops at Silvis or at other points, together with an adequate force of competent machinists, the carrier elected on the above date to send this diesel engine to the Electro-Motive Division for overhauling and repairs.

The agreement effective October 16, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing statement of dispute is conclusively supported by the current collective agreement, made in pursuance of the Amended Railway Labor Act, because the work in question is work covered in the scope of the machinists Classification of Work Rule 53, which, for ready reference, in applicable part, reads:

> "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), pumps . . . lubricator and injector work; . . . and all other work generally recognized as machinists' work." (Our emphasis)

It is moreover suffice to assert, without successful contradiction, that the dismantling, rebuilding and assembling of diesel engines comes within and is subject to the provisions of the above rule; that it is indisputable that the parties have so jointly applied this rule in that machinists have always been assigned to perform the overhauling and repairing of diesel engines on this railroad; that the claimants are regularly assigned to perform said work and that the election of the carrier to harm and damage its machinists through the arbitrary process of farming out their work to another company is not contributable to the lack of adequate facilities or a lack of a skilled force of machinists with which to handle the work in a highly efficient manner. The repairs to the above engine by an outside company was instituted by this

carrier, not on the basis of a permissible rule, but in the belief that the outside company would perform the work at a cost less than would be required on the carrier's property.

This carrier's action in farming out the repairs of this diesel engine to other than machinists regularly employed by this carrier, constitutes a flagrant violation of Rule 28(a), which reads as follows:

> "Rule 28 — Assignment of Work — (a) None but mechanics or apprentices **regularly employed as such** shall do mechanics work as per **special rules** of each craft, except foremen at points where no mechanics are employed." (Our emphasis)

Certainly, the employes of the Electro-Motive Division of General Motors Corp. are not machinists, regularly employed as such by this carrier.

The carrier's action further constitutes a flagrant violation of the seniority provisions of Rule 27, which governs those employes entitled to perform the work as outlined in the controlling agreement.

It should be noted that particular emphasis was placed in the agreement of October 16, 1948 to insert language intended to **prohibit** the carrier from hereafter unilaterally assigning the work specified in the agreement to other than employes covered by this agreement. This will be found in memorandum of understanding on page 69 of the agreement. That memorandum will show that the scope of the work covered by the six shop craft organizations, parties to that agreement, was expanded to cover all departments of the railroad, unless in those departments the work had previously been awarded to another organization. That memorandum further provided that no change would be made in the present practice as to the handling of maintenance of equipment work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange. We point particularly to the reference "which may be necessary to send." We recognize that there were conditions or circumstances which could arise where it would be necessary to send equipment back to the factory when it was not possible to perform the work in question on the property because of a lack of facilities, or while a piece of equipment, such as an engine, was under the new engine warranty under which the factory manufacturing the equipment guaranteed that piece of equipment or engine against defect in workmanship or material for a period of one year or 100,000 miles, whichever occurred first.

The employes have not objected to the carrier returning equipment to the factory during the warranty period, in which cases the factory either replaces or rebuilds the guaranteed equipment **without cost to the carrier.** In this case, the diesel engine sent to the Electro-Motive Division of General Motors Corp. was no longer under a warranty; neither was there any necessity to send this engine off of the property, because these engines are overhauled and repaired daily in the carrier's shops by the claimants and other machinists of this carrier.

Nowhere in its correspondence with the organization did the carrier state or attempt to imply that it was necessary to send this engine to the Electro-Motive Division of General Motors Corp. The carrier's recent attitude is that it simply has that right.

It is readily apparent that the foregoing act of the carrier is tantamount to abrogating, at its will, each and all of the above mentioned rules of the

aforesaid controlling agreement and, again, at its will, reinstating those rules. Consequently, it is obvious that the carrier's action was deliberate and violative of the letter and spirit of the controlling agreement, as well as in clear confliction with Rule 135 thereof, captioned, "Revision of Agreement" which, for ready reference, reads as follows:

> "These General and Special Rules effective October 16, 1948, and as revised September 1, 1949, and Rates of Pay effective February 1, 1951, and supplements and interpretations mutually agreed to thereafter, are to remain in force until revised in accordance with procedure required by the Railway Labor Act. All rules previously in effect are by this agreement abolished.
>
> No local mutual agreement will be made on these rules except on approval of the parties signatory thereto."

Keeping in mind that it was not necessary to send this engine off of the property to be repaired in view of the carrier having adequate facilities and employes to perform the work on the property; that this diesel engine was no longer under a new engine warranty, and the fact that the carrier **was required to pay** the Electro-Motive Division of General Motors and its employes for the cost of labor in overhauling and repairing this engine, the carrier's position in this case is similar to the position it took in the case decided under Award No. 1866, Second Division, as rendered by the Honorable Members of your Board.

Finally, it is the conclusion solely on the basis of the involved facts and rules of the controlling agreement applicable thereto that the arbitrary and indefensible action of the carrier is untenable and, therefore, the statement of dispute is subject to and should be sustained by the Honorable Members of this Division.

CARRIER'S STATEMENT OF FACTS: On March 12, 1955, carrier retired from its service one 16 cylinder model 567-B diesel engine (the power plant), serial No. 3346, and pursuant to its established policy, the carrier shipped this engine after removal from Engine No. 44 by its employes, to the Electro-Motive Division factory of General Motors Corporation at La Grange, Illinois. Engine 3346 thereupon ceased to be the property of carrier and became the property of General Motors Corporation.

The carrier received in exchange on a unit exchange purchase order a remanufactured, upgraded and converted Model 567-BC engine which carried the manufacturer's new engine warranty. The 567-BC engine is superior to the 567-B engine and is manufactured only by EMD. Rock Island has neither the machinery, equipment, nor the know-how essential to the remanufacturing and upgrading of a 567-B engine to a 567-BC engine.

The engine newly acquired in the manner above stated was then installed in carrier's locomotive No. 44 by employes of the carrier. The worn out engine disposed of by carrier in the exchange became the property of General Motors Corporation and was subsequently, we are informed, remanufactured, modernized, upgraded, and converted by EMD and placed in stock by EMD at its plant in La Grange, Illinois.

The carrier's employes have claimed the right to be compensated at overtime rates for the number of hours of labor utilized by General Motors Corporation in remanufacturing, upgrading, and modernizing the aforementioned

diesel engine, Serial No. 3346, disposed of by the carrier. Carrier has denied this claim.

An agreement between the carrier and the employes of the carrier, represented by System Federation No. 6, Railway Employes' Department, A.F. of L.-C.I.O., International Association of Machinist, bearing an effective date of October 16, 1948, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: Carrier has the right to buy new engines outright and place them in service on its property. By the same token, carrier has the unquestioned right to acquire by outright purchase, one or more factory remanufactured engines and place them in service on its property. Similarly, carrier has the unquestioned right to determine which of its units of machinery or equipment are no longer suitable or necessary for service on its line and to sell or otherwise dispose of such property. Carrier submits that there can be no dispute from any quarter as to the correctness of the foregoing propositions. Certainly, the carrier had so conducted its business since the earliest days of its existence. Yet, the employes in this case are espousing the proposition that carrier could not trade-in a worn out and antiquated engine as part payment on the purchase of a factory remanufactured engine. Clearly, there is no support for such a position in any applicable agreement, custom and usage on Rock Island property, administrative ruling, or the Railway Labor Act.

The claimant employes cannot properly contend to be entitled to payment for time consumed in remanufacturing engine 3346, for in the exchange it ceased to be the property of and passed beyond the control of the Rock Island. What EMD saw fit to do with the old engine was a matter in which Rock Island had no voice. The engine belonged to EMD and was subject to its exclusive dominion. If said engine was remanufactured, EMD did so only after ownership of said engine was transferred from Rock Island to General Motors Corporation.

Neither can the organization claim work performed on the remanufactured, upgraded and modernized engine acquired by carrier in the exchange, for such work had been fully completed before the new engine became the property of the Rock Island. The engine acquired was never before the property of Rock Island or subject to its control and the engine retired from service was not returned. Just as certain as carrier had the right to acquire this remanufactured, upgraded engine by outright purchase, so also can it acquire it by trading in a worn-out and antiquated engine as part payment of purchase price, as was done in this case.

The transaction is essentially one whereby a new engine, never before the property of the Rock Island, was acquired and a worn-out engine retired from service and applied to the cost of acquiring the new engine. This is the essence of the unit exchange program.

Rock Island does not now, nor has it at anytime during its existence attempted to remanufacture a diesel engine. It is, in fact, no better equipped to remanufacture, upgrade and modernize a diesel engine than it is to manufacture a new one. It is equipped to perform ordinary maintenance. There is a vast difference between the shop facilities needed to perform ordinary maintenance and the plant, machinery, and equipment which are essential to the remanufacture, upgrading and modernizing of diesel engines.

The engine newly acquired was a Model 567-BC, a model superior to the Model 567-B which was the type retired by the carrier. One of the major improvements in the Model 567-BC over the Model 567-B is a change eliminating upper and lower liner seals in the water circulatory system and providing individual water jumper lines to cylinder liners. EMD no longer remanufactures the 567-B type engine.

With the old water arrangement in the B engine of transferring cooling water from cylinder block for purpose of cooling the liner, we were experiencing numerous leaks, particularly at the bottom liner seals, which resulted in water getting into the crank cases, thereby damaging bearings and crank shaft, resulting in increased maintenance more frequently due to lubrication destroyed by presence of water and engines running hot through loss of water.

With BC engines, and their improved and modernized C type liners and water jumper lines, water leaks have practically disappeared. Other changes include alterations in the structural design providing reinforcing members where experience has demonstrated a need for them, and improved design for some of the components of the engine. Further, the remanufacturing process involves revitalizing the engine affected by metal fatigue. This revitalization is accomplished by a stress-relieving or annealing process, equipment for which we do not have. The end product of the remanufacturing process is a revitalized engine and one of different design from that which started at the beginning of the remanufacturing process. It is, indeed, a new engine and carries with it the manufacturer's new engine warranty.

Carrier does not now have, nor has it ever had, the facilities, tools, and equipment or know-how necessary to remanufacture, upgrade, or modernize a diesel engine. Consequently, the Rock Island has never performed any such work on its property. In order for the Rock Island to be able to perform such work on its property, it would be required to acquire stress-relieving furnaces large enough to handle these engines and it would be required to purchase precision machine tools needed to properly perform the operations which are essential to assure performance of work conforming to the strict, precise and rigid factory specifications. The cost of such equipment alone is estimated to be a minimum of $1,500,000.00, but that cost is only the beginning. Rock Island would be required to enlarge its shop buildings in order to house properly all the above equipment and, in addition, would find it necessary to purchase an idle stock of engines to be maintained in a pool from which to draw engines to install in locomotives from which engines long in service shall have been removed to undergo the remanufacturing process. The cost of such additional plant and inventory would require a further outlay of some $300,000.00.

The staggering cost of performing such work on the property is apparent. Consider also that because Rock Island would have only a minimum amount of this type of work to be performed, the plant, machine tool facilities, and spare engine inventory would remain idle approximately seventy percent of the time. This high proportion of idle time obviously would increase the unit cost to such a great amount as to be clearly prohibitive.

To hold that Rock Island has improperly denied the claim of its employes in this case would be to require it to perform a manufacturing operation. This, it has never done. Its policy of remaining out of the field of manufacturing diesel engines was established in the exercise of the unquestionable prerogative of its management. While we do not feel constrained to explain

all the reasons which justify this policy, we do believe it to be obvious that such policy was correct. Under the unit exchange program under which Rock Island acquired one newly factory remanufactured engine in exchange for one worn-out and antiquated engine, the carrier can remove an engine from a locomotive in its shop and get immediate delivery of a remanufactured engine carrying the manufacturer's new engine warranty. This can be done at a nominal cost as compared with the high cost which would result from acquiring the plant and equipment needed to remanufacture engines on railroad property.

Because of the tremendous cost required to enable it to perform such work, and the high unit cost of such work, Rock Island has never attempted to perform it.

This case, we submit, resolves itself into one question. i.e., has the carrier, in its managerial responsibilities and prerogatives, the right to determine whether to repair worn-out and antiquated engines in kind or to take advantage of a manufacturer's service, such as the engine exchange basis, to secure remanufactured engines and remanufactured, modernized, improved, upgraded and warranted engines and a type of engine that only the manufacturer can produce and one which the manufacturer is constantly striving to improve and modernize.

The prerogative of management permits managing officers to choose between available methods in furthering the purpose of the carrier. If such method chosen is one ordinarily pursued by management in the industry, it should be considered as a proper exercise of managerial judgment. (See Awards 2377 and 2922 of your Board). In the instant case, it was the carrier's judgment that the proper and sensible thing to do was to take advantage of the engine exchange service offered by the manufacturer and secure from them a complete, modernized, upgraded, and warranted engine rather than attempt to repair or rebuild worn and antiquated 567-B engines in kind which would not give us the advantage of a remanufactured, modernized, converted and warranted engine. The practice of trading used or worn-out or obsolete equipment as a part of the purchase price of remanufactured, rebuilt or new equipment is not new, in fact, it is the usual custom.

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted engines received on unit exchange purchase orders for older engines, bear more resemblance to the purchase of new engines than to the maintenance and rebuilding of old engines. (See Awards 2377 and 2922 of your Board).

We submit that this case is similar to that found in your Board's Awards 2377 and 2922.

We submit, also, without relinquishing our position as above, that the claimants involved were fully employed and, of course, can show no loss of earnings or injury in connection with this case, but assuming their claim has merit, which, of course, we deny, it is a well-established principle of this and other divisions of the Adjustment Board, that if penalty is to be assessed by this Board — and there is no rule in the employes' agreement providing for such — it can only be at pro-rata rate.

On basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employes' agreement.

We respectfully request your Board to deny this claim.

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 were given due notice of hearing thereon.

Under their agreement claimants craft had the contract right to maintain carrier's diesel engines, but carrier had the right to determine what engines it desired to have maintained as well as the right to dispose of such engines as it determined not to maintain by sale or exchange, with the sale price applied on the purchase price of the engine received, provided that it did not by subterfuge or indirection farm out its work of maintenance, repair and overhauling which its employes had the right to perform.

Carrier has shown that the diesel engine here involved was obsolete; that it was traded in as part payment of the purchase price of another diesel engine received from the Electro-motive Division of General Motors Corporation from which it had been purchased; that if it was overhauled and rebuilt, so far as known it has not been resold or returned to this property; that the engine received in its place had not theretofore belonged to carrier but was purchased from some other user and had been dismantled and rebuilt at the factory to include major improvements and altered and improved design, making it a new model engine with a new engine warranty. Admittedly, machinists continued to be employed by carrier in the overhauling and rebuilding of diesel engines which it kept in service, and it has not here been established that carrier violated the agreement in the exchange of diesel engines here complained of. Awards 3228 and 3269 determining like issues between the same parties should be followed here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1961.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3816 AND 3817

The Machinists' Classification of Work Rule No. 53 of the current agreement reads in part as follows:

> "Machinists work shall consist of * * * building, assembling, maintaining, dismantling and installing locomotives and **engines** (operated by steam or other power) * * *." (Emphasis ours.)

The work of dismantling, rebuilding and assembling of Diesel engines comes within and is subject to the provisions of the above rule and has been performed by this carrier's machinists. Further, under the date of August 4, 1948, the scope rule of the current agreement was changed to prevent the assignment of work to other than employes covered by this agreement and reads in part as follows:

> "It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Departments and in other departments of this railroad * * * **is to prohibit the carrier from hereafter unilaterally assigning the work specified in this agreement to other than employes covered by this agreement.** * * *." (Emphasis ours.)

When the carrier sub-contracted this work it violated not only the said agreement but Section 2, Seventh of the Railway Labor Act. The Board should have ordered the carrier to obey the command of Section 2, First of the Act by complying with its duty to maintain the existing agreement.

T. E. Losey

Edward W. Wiesner

E. J. McDermott

C. E. Bagwell

James B. Zink