Award No. 1943
Docket No. 1753
2-CRI&P-EW-'55

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. (ELECTRICAL WORKERS)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That employes of the Electrical Workers' Craft at Silvis Shops were unjustly damaged during the period of December 26, 1952 through January 2, 1953 when the Carrier denied them their employment rights due to having their work on Diesel traction motors, their work on Diesel generators and their work on Diesel No. 621 performed by employes of contractors not subject to the current agreement applicable to them.

2. That accordingly the Carrier be ordered to make these employes whole during the aforesaid period in the amount of 40 hours' pay each at their respective applicable rates. Their classifications and their names follow:

a) **Electricians:**

Addison, Pete
Alexander, William P.
Bennett, Walter F.
Birlew, Charles G., Jr.
Bowden, Orren B., Jr.
Brock, Ralph K.
Carson, Donald F.
Culley, Robert G.
Estes, Arthur
Foale, Charles R.
Giebel, Glenn A.
Graham, Jesse D.
Hall, Earl H.
Halloway, Averill H.
Hanneman, Glen R.
Hardi, John
Henderson, Charles V.
Hill, Geoffrey R.
Hurley, John L.
Ickes, Howard C.
Koehler, Paul W.
Lear, Lowell G.
Leedham, Howard R.
Loding, William J.
Martin, Alvin W.
Merreighn, Francis E.
Ogren, Donald L.
Papish, Martin J.
Poehls, Earl G.
Poehls, Edward E.
Randall, Harry L.
Roehrer, Richard C.
Sherwood, Ishmael S.
Smith, Wallace L.
Spurr, Edwin E.
Valentine, Ervin R.
Virnig, Louis J.
Vollert, Harry
Ziegler, Harold A.

The parties to said dispute were given due notice of hearing thereon.

Claimant was given regular hearing on three charges:

1. Of failure to perform items 69 and 71 of monthly inspection on car T. A. Hendricks and falsification of car maintenance record card by indicating complete monthly inspection.

2. Of failure to perform weekly inspection of car Poplar Hill as instructed.

3. Of failure properly to make a daily inspection of car Croton Falls.

Each of the charges was found substantiated by the evidence and he was assessed with a "warning" with respect to each charge. Thereby it is cliamed that he was unjustly treated and that carrier should be ordered to clear his record of the charges.

A detailed discussion and analyis of the record would be without value.

As to Charge No. 1, claimant in substance admitted that he marked up a complete "M" inspection but says his other work called him away and he did not have time to complete it. He marked up an "M" inspection both on his servicing report and record of repairs card. Upon spot check afterward it was found among other things that one floor heat valve was stuck and that the pump motor circuit was improperly fused with 30 A fusetrons instead of 25 A as prescribed. If, as he testified, there were no 25 A in stock, he failed in his duty to report it.

As to Charge No. 2, claimant had written instruction to give the car a "W" inspection. He returned the car defect card showing "W" inspection, but turned in his servicing report showing "D" inspection together with three "W" items, and on his record of repairs card he failed to show what type of inspection had been made. He states as excuses that his foreman was primarily interested in finding out what had caused a cooling failure on the car, which he located; that the car was not due a "W" inspection, and that he did not have time to finish the inspection but failed so to report. If true, they do not excuse his failure to obey instructions nor account for such inconsistent reports, and carrier's business cannot be run with any success on such confusing records.

As to Charge No. 3, claimant reported a "D" inspection on his record of repairs card and servicing report, but the Assistant Foreman on inspecting the car before its departure found the filters overdue for exchanging and completely stopped up, and the cooling pilot relay not operating properly. Claimant's carelessness in making up his reports is evidenced by the fact that his servicing report was marked to show that he had inspected three items of equipment which the car did not have. There was evidence to the effect that ordinary "D" inspection might not have caught the defects found uncorrected, but there was substantial evidence to support finding that they should have been discovered. No prejudice or arbitrary action appears.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1955.

4. Practice on the property before and during negotiation and after the effective date of the agreement does not support the organization's case. Practice supports the carrier's position.

5. The employes did not perform all this work when it originated on the property. At no time have they performed all the disputed work.

6. Officers of the organization knew the carrier's position during negotiations leading up to the memorandum of understanding. It was re-explained to them by one of carrier's officers in 1949. **Through your Board's action the organization is striving to gain something they could not get through the legitimate channels of negotiations.**

7. The memorandum of agreement does not deny the carrier the right to have a portion of its diesel repairs protected by a guarantee.

For the foregoing reasons the carrier respectfully petitions the Board to deny the 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.

The parties to said dispute were given due notice of hearing thereon.

Two essentially different issues are included in this claim: first, one based on the contracting out of work on engine 621, and second, one based on the contracting out of the rebuilding of five traction motors.

As to the first issue, Carrier defends its action principally on the ground that this was highly specialized work for which its forces had neither the special skill and experience nor the equipment. As to both issues, it leans heavily on a Memorandum of Agreement, effective October 16, 1948, expressing the understanding that the purpose of certain change of wording was "to prohibit the Carrier from thereafter unilaterally assigning the work specified in the Agreement to other than employes covered by this Agreement. This change does not * * * change present practices as to handling of Maintenance of Equipment work which may be necessary to send to the factory for repairs, rebuilding, replacement or exchange."

The purport of that Memorandum has been considered by this Board in Award 1865 and 1866. The word "necessary" therein is much more restrictive than "convenient" or "expedient". To hold otherwise, as urged by Carrier, would nullify the declared purpose of the change. Under that Memorandum, in order to justify contracting out any work covered by the agreement, it must appear not only that it is in accord with prior practice but also that the circumstances warrant the exercise of managerial judgment as to the necessity therefor.

As to the first issue: engine 621 was one of Carrier's oldest diesel units, which had been repaired for ten years by its own employes. The work performed by the Electro-Motive Division of General Motors Corporation was not that of repairing or rebuilding; it was the conversion from an old "Alco" type locomotive to a new "EMD" type locomotive, manufactured only by the company to which it was sent, at a total cost of $137,000. Many new features were incorporated and such a conversion task had never been attempted by Carrier's forces. The contract was more analogous to the purchase of a new

engine than the rebuilding of an old one and was warranted in such circumstances.

Not so as to the five traction motors. They were sent to the factory for rebuilding and it was in accord with prior practice, but it was no longer necessary so to do. It is not denied that Carrier's shop could do the work and had done like work. The fact, as urged by Carrier, that the company to which the work was contracted offered a new motor guarantee is not a valid reason for contracting out. If so, employes' right to work would be an illusion.

Such rebuilding of motors was work which belonged to employes under their Agreement; and for its loss they should be compensated at their pro rata rate for the number of hours equal to those paid by Electro-Motive Division of General Motors Corporation to its employes of that craft for its performance.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1955.