Award No. 2530
Docket No. 2452
2-EJ&E-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 88 RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Federated Trades)

ELGIN, JOLIET AND EASTERN RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than employes of the Machinist, Electrical, and sheet Metal Crafts were improperly used to dismantle and repair the air conditioning equipment in Building No. 100 at Joliet, Illinois on June 24, 27, 28, 29, 1955.

2. That accordingly the Carrier be ordered to additionally compensate the hereinafter named employes 8 hours' pay each at the applicable straight time rate of pay for each of the above enumerated days:

Machinist	— K. Zweig	Machinist Helper	— R. Adams
Machinist	— H. Erickson	Machinist Helper	— L. Ramsey
Machinist	— W. Hill	Machinist Helper	— L. White
Machinist	— Wm. Jenkins	Machinist Helper	— H. Trebby
Electrician	— John H. Barnes	Electrician Helper	— D. McGowan
Electrician	— J. H. Donahue	Electrician Helper	— J. Stefanski
Electrician	— R. Huumo	Electrician Helper	— A. G. Jeffrey
Electrician	— L. F. Keeney	Electrician Helper	— A. P. Cormier
Electrician	— E. Kastl	Electrician Helper	— L. Swansborough
Sheet Metal Wkrs.	— E. Bowman	Sheet Metal Hlpr.	— E. Anderson
Sheet Metal Wkrs.	— E. Schmidt	Sheet Metal Hlpr.	— B. Sebben
Sheet Metal Wkrs.	— G. Adelman	Sheet Metal Hlpr.	— D. Bell
Sheet Metal Wkrs.	— J. Pearson	Sheet Metal Hlpr.	— E. Mantia
Sheet Metal Wkrs.	— A. Schmidt	Sheet Metal Hlpr.	— J. Palcisko

EMPLOYES' STATEMENT OF FACTS: On or about June 20, 1955, the Elgin, Joliet & Eastern Railroad, hereinafter referred to as the carrier, decided that repairs were required on the air conditioning system in building No. 100. The building is located inside the northeast property line of the carrier at Joliet, Illinois approximately 400 yards from the locomotive shop.

The carrier submits that the notice of intention to file proceedings must be filed 30 days prior to the expiration of the 9 months' period stated in Section (c) of the time limit on claims rule, and the submission itself must be filed within 9 months in order to meet the requirements of the time limit on claims rule.

The carrier's contention that filing a notice of intention to institute proceedings is not the institution of those proceedings is not only true on principle, but is supported by Award 6863 National Railroad Adjustment Board, Third Division, wherein it was held that notice of intention to present claims did not comply with the agreement which required claims to be presented within 60 days of the occurrence.

VI. NONE OF THE CLAIMANTS WERE INJURED IN ANY WAY.

During the time the air conditioning system was being dismantled all of the claimants were provided with full time employment upon work usually assigned to them and coming under the scope of their working agreement.

It cannot be argued that the carrier dealt in bad faith or was arbitrary in any way, since the record of performance of the air conditioning system in question shows that the carrier went to great lengths in an attempt to qualify claimants' crafts to perform this work and the work was not contracted out until after those crafts had demonstrated conclusively that they could not keep this air conditioning system in service.

VII. CONCLUSION.

The carrier is confident it has demonstrated to the satisfaction of this Board that it acted properly in assigning the work in question to an outside contractor; that the part of the claim pertaining to the electrical and sheet metal crafts was never handled on the property; that no part of the claim ever was handled properly on the property in accordance with the Railway Labor Act; that the claim was not appealed to this Board in season; and that none of the claimants were injured in any way.

In view of the foregoing, the carrier asks that this claim be dismissed in its entirety.

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.

While the carrier raises several procedural defenses herein, we elect to dispose of this dispute finally upon its merits.

This dispute involves work by outside forces upon an air conditioning system for carrier's office quarters at East Joliet, Illinois. The carrier defends upon the grounds that the work was so specialized as to fall outside the normal scope of work performed by carrier's employes.

The building involved was completed late in 1952 by an outside contractor. A sub-contractor had installed the combined heating, air conditioning, and ventilating system which, it is stated, was the first and only such centralized system in existence upon the company's property. The first cooling season, the unit worked satisfactorily. The following season the system was out of service eight times. On each occasion company forces made the repairs under the supervision of the installing sub-contractor. The third cooling season started in as the season before with a series of shut

downs and repairs by carrier forces. The manufacturer contended that the compressor would do the work if properly installed and maintained. The installing sub-contractor insisted that the system was properly installed. The manufacturer finally agreed to guarantee the performance of the compressor and system if it was permitted to maintain the system with its own technicians after it was placed in good condition. It is not the maintenance work which is claimed by carrier employes but part of the system rebuilding work which was carried on during the period June 10, 1955 and July 15, 1955. In rebuilding the system the source of the trouble was found to be in the design and successful corrections were made.

It is clear that the work in question called for specialized skills not possessed by carrier's forces. The installation was the first of its kind upon the property. The operation of air conditioning systems is not at yet standardized, nor, as indicated by the experience in this case, entirely out of the experimental stage. The carrier, however, attempted in good faith over an extended period of time and at a considerable expense to correct the faulty system through the use of its own force acting under skilled supervision but without success.

The particular work claimed is not described but from the time periods involved in such claims we assume that it is a comparatively small part of the entire rebuilding job. Claimants further fail to show that the portion of the work claimed by them was divisible.

Considering all the circumstances presented by this record, we find that the carrier was without fault in engaging outside, specialized skills in the rebuilding of its air conditioning system.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2530.

The majority concedes that the instant work of repairing the air conditioning equipment was done in the past by the shop craft employes and is included in the agreement in effect between this carrier and System Federation No. 88, but when making the award ignored provisions of said agreement. The agreement was made pursuant to the Railway Labor Act, Section 2, Seven, of which requires:

> "No carrier, its officers or agents, shall change the rates of pay, rules, or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this act."

Therefore the majority erred in making the instant award.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink