

Award No. 3276

Docket No. 2849

2-IC-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That employes of the Telephone and Communications Department were unjustly damaged when other than employes covered by the current agreement between the Illinois Central Railroad and System Federation No. 99 were used to install an intercommunication system at the South Water Street Freight House at Chicago, Illinois.

That the following named employes of the Telephone and Communications Department be compensated at the time and one-half rate for a total of 160 hours, to be equally divided among them:

R. E. Leonard
R. W. Corey
L. E. Griffith

C. E. Snyder
M. L. Leturno
C. E. Wood

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter referred to as the carrier, contracted with the Illinois Bell Telephone Company for the installation and maintenance of an intercommunication system in the South Water Street Freight House, Chicago, Illinois.

The inter-communication system involved consists of master sets, microphone and amplifier sets, wiring and installation junction boxes, cable installation and power back system.

The employes named in the above claim of employes, hereinafter referred to as the claimants, are employed in the Telephone and Communication Department of the carrier and hold seniority as electricians under the provisions of the current agreement.

Section 15 a (2) of the Interstate Commerce Act reads:

“In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.”

The Third Division of the Adjustment Board said in Award 5331:

“It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy.”

and in Award 5803:

“It is the duty of management to operate its railroad with efficiency and economy.”

To carry out its obligation to operate with efficiency and economy, the carrier has refrained from contracting away its right to set its financial policies.

To clarify the type of financial policy decisions involved, it should be stated that the decision to lease equipment or to buy equipment depends on some or all of the following factors: the availability of cash to buy equipment, the interest income that could be obtained for the cash if invested instead of spent, the rate at which the equipment, if purchased, could be charged off as depreciation expense or obsolescence, the anticipated maintenance expense on purchased equipment, and a comparison of these factors with the costs for leased equipment. All of these factors may change from time to time, and the management retains its right to change its financial policies to meet the changing circumstances.

The right to determine and change its financial policies is an inherent right which the management has not bargained away. There is no basis for this claim, and it should 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 were given due notice of hearing thereon.

A communication system for checking freight cars was installed in the carrier's South Water Street, Chicago, out-bound freight house in 1955 and 1956. The system was installed and is maintained by Illinois Bell Telephone Company. The carrier leases the system from the telephone company and apparently one of the conditions of the lease agreement is that the system shall

be installed and maintained by employes of the telephone company which is the owner of the equipment.

The electrical workers contend that the current agreement between the carrier and the organization was violated to the damage of employes of the carrier's Telephone and Communications Department by permitting employes of Illinois Bell Telephone Company to install and maintain this equipment.

Unquestionably, the installation and maintenance of this type of equipment would properly belong to employes of the carrier's Telephone and Communications Department under the provisions of Rule 54 if the carrier had seen fit to purchase the component parts and install the system as its own property. However, where, as here, the property is leased by the carrier under conditions requiring that the work of installation and maintenance be done by employes of the lessor, the carrier is deprived of the exclusive dominion and control necessary to permit it to assign the work to its employes. Neither the scope rule nor any of the other provisions of the current agreement deprives the carrier of freedom of initial choice between purchase or lease of equipment, and if a lease agreement deprives the carrier's employes of work to which they would be entitled if the equipment were purchased, the carrier does not violate the scope rule by entering into the lease agreement. The instant claim therefore lacks merit.

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 1959.