Award No. 3457

Docket No. 3390

2-CRI&P-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when the award was rendered

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PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly contracted out the re-winding of twenty eight traction motor armatures during the period of November 11, 1957 to and including December 19, 1957 to be performed by employes of contractors not subject to the current agreement. On December 31, 1957 the Carrier posted a bulletin abolishing the jobs of the following upgraded Electricians, effective January 4, 1958:

Greer, Bruce A.	Hendren, Gary E.
Korthals, Wm. C.	Rose, John B.

These upgraded electricians bumped back to Helpers, suffering the difference in Mechanic's and Helper's rate of pay.

2. That, accordingly, the Carrier be ordered to compensate the Claimants named hereinabove the difference between Mechanic's rate and Helper's rate, based on the number of hours it took employes of the contracting firm to perform the work.

On December 31, 1957 the Carrier posted a bulletin effective January 4, 1958 notifying the following named Electrician Helpers that they would be laid off because of a reduction of forces:

Barnes, Robert D.	Mills, Thomas J.
DeFauw, Adolph C., Jr.	Marner, Marshall M.
Giese, Tommy W.	Douglas, Gerald C.

These employes suffered the loss of their entire daily wage.

3. That, accordingly, the Carrier be ordered to compensate the Claimants named hereinabove, the loss suffered by them, to be determined on the basis of the number of hours it took the employes of the contracting firm to perform the work.

4. That money awarded in this claim be used, first, to compensate the employes listed in Items 1 and 2 hereof, any remaining balance to be equally divided between the Electrical Workers working in the Electric Shop at Silvis.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, employes regular assigned forces in their electrical repair shop at Silvis, Illinois, to perform, among other duties, the work set out in Part 1 of the claim above.

The carrier sent twenty seven of these armatures to the National Coil Company for re-winding and received twenty seven re-wound armatures in return.

One armature went to the Electro-Motive Division of General Motors for rewinding and the carrier received one re-wound armature in return.

On December 31, 1957 the carrier posted notice abolishing four electricians positions. Also, on December 31, 1957 the carrier posted notice laying off six electrician helpers.

This dispute has been handled with all carrier officials designated to handle such disputes, all of whom have declined to make adjustments satisfactory to the employes. The agreement effective October 16, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing statement of dispute is adequately supported by the terms of the aforementioned controlling agreement made in good faith between the carrier and System Federation No. 6 in pursuance of the amended Railway Labor Act, because:

1. The work covered in the above statement of claim and the statement of facts is expressly impanelled in the **"Electricians Special Rules" 101, 103, 104 and 106.**

2. The shop facilities of the carrier at Silvis, Illinois are abundantly sufficient to handle the work in question properly and expeditiously.

3. The carrier's force of employes in the electrical workers craft possessed the necessary experience and skill to have performed the work in question in an expeditious and outstanding mechanical manner.

The carrier's action in sending this work to outside contractors was obviously deliberate and violative of the title page and of the letter and spirit of the terms of Rule 135, "Revision of Agreement" of the said controlling agreement and constitutes:

"A. Having such work here in question performed by outside interests that were not qualified under Rule 100 captioned "Electricians-Qualifications", or those who were promoted under the upgrading agreement.

service. Our employes of the electricians craft, at the time these armatures were sent to the factory, were fully employed and, hence, were not injured as to loss of earnings.

It has been the practice under the current agreement and also prior to the effective date of the current agreement that when the carrier was faced with more defective armatures than its forces could currently handle, and it was necessary to get these armatures back into service as quickly as possible, to send out certain armatures to the factory for rewinding, and no protest made under the prior agreement, nor for approximately 8 years after the current agreement became effective.

An available supply of traction motor armatures is necessary for the efficient and prompt utilization of diesel power and lack of such armatures on the property unnecessarily ties up expensive power and affects prompt handling of revenue traffic. Because of this situation, the carrier as manager of the property, deemed it necessary in order to properly carry on its business of transportation to use our prerogative and responsibility to make use of an outside concern, as has been done many times in the past, to have these armatures so rewound on a warranty basis and returned to the property as quickly as possible. The only party having the responsibility of making a decision as to whether such handling is necessary or not must rest with management.

The claimants listed in No. 1 of the employes' claim continued to work as electrician mechanics during the period involved — Bruce A. Greer to April 18, 1958; W. C. Korthols to May 5, 1958; and G. E. Hendren and J. B. Rose to January 6, 1958. The claimants listed in No. 2 of employes' claim continued at work until January 4, 1958. Item 4 of the employes' claim is another request for unnamed employes who, the organization admits, were actually working during period involved, but such claim is too ambiguous to merit consideration. In both cases therefore, these claimants were fully employed during period of claim and, hence, lost no earnings. Therefore, not having been damaged, there can be no penalty, even if claim had merit, which we deny. In this connection, we respectfully refer your Board to the following decisions:

> Awards 5186, 6833, 6828, 6803, 6802, 6759, 6757, 6625, 6623 and 6462 of the Third Division. Also Awards 3651 and 3659 of the same Board. Awards 15865, 10350, 12743, 12822, 12836, 12837, 14099, 14997 and 16137 of the First Division, as well as Award 1638 of the Second Division, as well as Republic Steel Corporation v Labor Board 311 U. S. 7, of the Supreme Court.

We submit that, under the circumstances in this docket, there was no violation of the employes' agreement and we respectfully request denial of 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.

The instant case arose from the Carrier's contracting out the re-winding of twenty-eight (28) traction motor armatures during the period of November 11, 1957 to and including December 19, 1957 to the National Coil Company.

The Carrier's position in this docket is that it found itself with these defective Motor armatures which it claims had to be rewound as quickly as possible to make them available for service. They further contend that the electricians craft, at the time, were fully employed and, hence, were not injured as to loss of earnings.

The employes disagree with Carrier's contention and state that on December 31, 1957 the Carrier posted a bulletin abolishing the jobs of four upgraded electricians, effective January 4, 1958. This caused the electricians to bump back to Helpers, suffering the difference in Mechanics and Helper's rate of pay. They (the organization) further claim that the Carrier's action in reduction of forces effected six Electrician Helpers who were laid off and suffered the loss of their entire daily wage. In their statement of claim, they contend this work is included in the Agreement as Electrician's work and the assignment to others is a violation of Rules 101, 103, 104 and 106.

This Board has consistently upheld the Managerial right of the Carrier to operate its business, even to the extent under certain circumstances of using outside firms to perform services for them, but in the exercise of this prerogative the Carrier must assume the responsibility of its Management's judgement and must show that an emergency existed to the extent that warranted their contracting to others work that belonged to their own employes.

The evidence presented agrees that the 28 armatures were sent to an outside firm during the period stated above. It also agrees that claimants suffered pay losses effective January 4, 1958. There is no denial that the Carrier's shops were well equipped and sufficiently staffed to do this work. The Carrier's defense that the claimants were employed during this period (November 11, 1957 to December 19, 1957) lacks merit. Carrier's management should have known at the time that they were sending out these armatures that two weeks later they would be cutting down their electrical staff. Further, a number of these armatures could have been repaired in the shops by, if necessary, working their employes longer hours thus eliminating a possible emergency.

In a similar instance involving the same parties this Board decided (Award 1943).

> "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."

The evidence as presented in this case fails to substantiate the necessity for the carrier to send out these armatures to be rewound so a sustaining award is in order.

AWARD

Claim (1) (2) (3) (4) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1960.