

Award No. 3461

Docket No. 3443

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 award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Electrical work required in repairing passenger cars 328 and 336, comes within the scope of the current agreement as Electricians' work, and that the Carrier violated the applicable rules of said agreement.
2. That accordingly, the Chicago, Rock Island and Pacific Railroad Company be ordered to:
 - (a) Desist from unilaterally transferring passenger cars from their shops and facilities to other companies.
 - (b) Compensate Electricians Lyle Johnson, Gordon Hull, J. B. McCarthy, John Fitzgibbons, Italo Carllassare, Gunner Hellstrom and Frank Wachholz at applicable time and one-half rate for the number of hours charged to the Carrier by The Pullman Standard Car Manufacturing Company. Money awarded to be divided equally between the above Claimants.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, maintains a car repair shop fully equipped with machinery and available skilled mechanics assigned Monday through Friday, capable of performing any and all repairs to railroad passenger cars. Among the skilled employees are the above-named electricians hereinafter referred to as the claimants.

On September 23, 1957, Passenger Train #507 was involved in a wreck at Peabody, Kansas, which resulted in damage to a number of cars, necessitating repairs to them. The damaged cars were sent to carrier's car repair shop at Chicago, Illinois.

and 358 were rebuilt by the Pullman Standard people without complaint from the employes.

We submit again that the carrier did not have available sufficient carmen or electricians to perform all of the work on these seven cars and, at the same time, have them ready for expected holiday travel. The carrier's supply of available coaches is limited and it was imperative all cars be rebuilt as quickly as possible, and surely the carrier is not expected to defer necessary and urgent work when time is of the essence and equipment must be returned to revenue service as quickly as possible at a time when travel is at its season's peak.

All available electricians were working full time when the two cars were sent to the Pullman Standard Company, and we had all qualified available helpers upgraded to electrician mechanics.

As indicated, the electrical work was of a minor amount as compared to actual rebuilding of the two cars themselves and, as your Board in Award 2458 said:

"We think that the work contracted out may not be subdivided for the purpose of determining whether some of it could be performed in the shops of the carrier. Under the circumstances here shown, it appears that the Carrier's decision to have the work done by the builder of the locomotive was reasonably justified and, under our awards, was not a violation of the agreement. See Award No. 2377."

The carrier submits that the carrier's decision to have the work done on these two cars by the builders, under the circumstances involved, was justified.

The employes make claim for penalty pay for an unspecified amount of hours for the work performed, but are silent as to what work was performed. We are unable to determine how much time the builder devoted to such work. In any event, the claimants were fully employed at the time and suffered no loss of earnings and, even if the claim had merit, and without relinquishing our position as above, we submit that if the Board nevertheless finds otherwise, we submit that the penalty, if any, can be at pro-rata rate only for work not performed — a principle upheld by the Second Division and other divisions of the Adjustment Board.

On basis of the facts and circumstances in this particular case, the agreement was not violated and claim has no merit and 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.

Seven passenger cars were involved in the same wreck, five of these cars were repaired in the Carriers shops and Cars 328 and 336 were sent to the Pullman Standard Car Manufacturing Company for repairs.

The organization contends that the carrier had sufficient man-power and facilities to perform these repairs in its own shops and by failing to do so, violated their agreement. They request compensation for the claimants (electricians) for the number of hours charged to the Carrier by The Pullman Standard Car Manufacturing Company.

The Carrier says that these two cars were damaged to such extent that the Carrier's force of available carmen and electricians to be used in restoring the other five cars to service along with taking care of the day to day maintenance repairs and servicing of their usual work required that it was necessary to send these cars to The Pullman Standard Car Manufacturing Company to be rebuilt.

The record indicates that some of the repairs were made on these coaches at the Carriers Shops before sending them to the Pullman Standard Car Manufacturing Company for the contracted work to be performed by them.

The Carrier contends that one of the reasons for returning these cars to the builder for reconstruction was their desire to have them in service for the holiday rush as the supply of available coaches was limited. They further contend that all electricians were working full time when these two cars were sent out and that the electrical work was a minor amount of the actual rebuilding that was necessary.

The evidence as presented is insufficient for us to issue a sustaining award. Consideration must be given to the judgment of the Carriers managerial staff, as they are charged with the economical and efficient operation of the railroad. We are in no position from the evidence as presented to state that this reconstruction of the cars could have been done as quickly and efficiently in the Carriers shops, nor are we able to say that they could foresee the economic change in the Carriers business that would require a change in their employment situation.

Further, this Division agreed in Awards 2377 and 2458 that work contracted out must be considered as a whole and may not be subdivided for the purpose of determining whether some of it could be performed in the shops of the Carrier. In the instant case the electrical work on these cars was a small portion of the work to be performed by The Pullman Standard Car Manufacturing Company.

AWARD

Claim denied.

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

DISSENT OF LABOR MEMBERS TO AWARD NO. 3461

The conclusions of the majority in Award 3461 can only be attributed to a complete lack of understanding, or to a total disregard of the facts as contained in the record and rules of the controlling agreement. The majority state:

"* * * work contracted out must be considered as a whole and may not be subdivided for the purpose of determining whether some of it could be performed in the shops of the Carrier * * *".

The record discloses that some of the repairs were made on these coaches by the carmen and electricians at the car shops of the carrier before the carrier took the work away from them by shipping the coaches to the Pullman Standard Car & Mfg. Co. On page 3 of their rebuttal the employees state:

"The employees do not here desire to argue a claim in behalf of the Carmen. However, a claim involving this same issue involving these cars, in behalf of the Carmen, has been heard before your Board, identified as Docket 3359 * * *"

The entire award is in error and we dissent.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink