Award No. 3480
Docket No. 3287
2-Mon.C-USWA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA — A.F.L.—C.I.O.

MONONGAHELA CONNECTING RAILROAD COMPANY, THE

DISPUTE: CLAIM OF EMPLOYES: The employes claim "that the Carrier violated Articles 34 and 37" when the Carrier contracted the redesign and remanufacture of Engine No. 110 with the General Electric Company. The employes base their protest on the fact that they were not notified under the provisions of Article 34 prior to the time the locomotive was remanufactured by General Electric.

JOINT STATEMENT OF FACTS: The Monongahela Connecting Railroad Company (herein referred to as the carrier) is an industrial common carrier switching railroad owning approximately 52 miles of track and operating on the North and South banks of the Monongahela River in Pittsburgh, Pennsylvania. Primarily it serves the Jones & Laughlin Steel Corporation, a large producer of iron, steel and steel products. Other companies served by the carrier are the C. G. Hussey & Company, Iron City Sand and Gravel Corporation, Duquesne Slag Products Company and the Allegheny Contracting Industries, Inc. The United Steelworkers of America, AFL-CIO is the duly authorized representative for employes of the Maintenance of Equipment Department of this carrier. Such employes are covered by an agreement which became effective on May 1, 1953 and, as amended, is in full force and effect at the present time. Those sections of the current agreement which are pertinent to the instant claims are as follows:

ARTICLE 34

"DISTRIBUTION OF WORK

(a) In line with classification rules, practices in distribution of work that were in effect October 31, 1947, will be continued.

(b) It will not be the policy of this Carrier to contract Motive Power Department work to outside concerns, but the Carrier reserves the right to do so when in its sole judgment it is necessary. In all such cases, and prior to the performance of the work in question, the Superintendent of Equipment will call in the Local Grievance Committee and explain the situation."

ARTICLE 37

"REVISION CLAUSE

(a) These Revised Regulations shall become effective December 10, 1956, superseding all previous regulations, memoranda and understandings governing the employment of, rates of pay, and working conditions affecting employes coming under the scope hereof. All rules, regulations, interpretations or practices, however established, which conflict with these revised Regulations shall be eliminated, but prior practice and custom not in conflict with these Regulations may be continued.

(b) The rates of pay, rules and working conditions set forth in these Revised Regulations shall continue in full force and effect until changed in accordance with the provisions of The Railway Labor Act, as amended, except that no proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the Organization against the Carrier or by the Carrier against the Organization until after October 31, 1959.

(c) The foregoing Section shall not prevent changes in rates of pay, rules or working conditions upon which the Organization and the Carrier may mutually agree."

ARTICLE 15

"DISCIPLINE AND INVESTIGATION

(b) Employes who have reasonable complaint or grievance, or who wish to appeal from any disciplinary action may do so providing notice in writing covering the subject matter of complaint is given to the Superintendent of Equipment within ten (10) days of date of decision giving rise to the complaint. The Superintendent of Equipment will set a time and place within ten (10) days after notice is received for the purpose of discussing the case and will render decision in writing within ten (10) days after the meeting.

(c) The aggrieved party or parties may place their case in the hands of their Local Union Committee or any other person of their choice to handle in these meetings.

(d) Failing to reach agreement with the Superintendent of Equipment the case may be appealed within ten (10) days to the Committee for the Carrier. Failing to agree with the Committee for the Carrier, the case may be appealed to the General Superintendent or his designated representative, who shall be regarded as the final official to whom a case may be appealed. The time limitations for appeals and decisions under this Section shall be the same as provided under Section (b).

(f) Time limits, as specified above, may be extended by mutual agreement. Decision by the highest official of the Carrier designated to handle appeals of claims and grievances shall be final and binding unless within thirty (30) days after written notice of the decision of said official, he is notified in writing that his decision is not acceptable. Any further processing of claims and grievances involved in such un-

acceptable decision of the highest official shall be by submission of such claims or grievances to the National Railroad Adjustment Board, or, by agreement of the parties in writing, by submission to arbitration or to a special board of adjustment as contemplated by The Railway Labor Act. If such claims or grievances are not so processed within one hundred and eighty (180) days after written notice of said highest official's decision, such claims or grievances shall be deemed to have been barred and abandoned. This compulsory method of disposition of all unsettled disputes arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions shall govern the disposition of all future cases as well as those cases pending and unadjusted as of the effective date of this Agreement."

The engine in question was acquired by the carrier in 1941 and this particular series of locomotives is no longer being manufactured, nor are replacement parts available through regular channels. Ordinarily due to the limited power delivered, the inaccessibility and high cost of replacement parts and the frequency of repairs to this series of locomotives, sound economics would dictate the replacing of same with new equipment. However, the carrier has a unique service requirement in an area known as the "Furnace Alley" that only locomotives of this series can accomplish. Actual replacement of this equipment would necessitate the carrier placing an order for a "custom built" locomotive as no standard locomotives meeting the "size" requirements are manufactured. As with other "custom built" products, the price of such a locomotive was deemed by the carrier to be prohibitive. The other alternative available to the carrier was to have the locomotive redesigned and remanufactured to conform to the original chassis.

Engine No. 110 was redesigned and remanufactured at an approximate cost of $80,000 with a new locomotive warranty according to the partial listing of specifications which are submitted herewith and identified as Exhibit A. Diesel electric Engine No. 111, an identical locomotive, has subsequently been similarly redesigned and remanufactured by the General Electric Company. The General Electric Company also rebuilt Engine No. 100 of this carrier.

On July 5, 1954 Engine No. 110 was shipped by The Monongahela Connecting Railroad Company to Cleveland, Ohio for use on the Cuyahoga Valley Railway Company under a lease agreement.

On June 1, 1956 Engine No. 110 was taken out of service by the Cuyahoga Valley Railway. During these two years of service for the Cuyahoga Valley Railway Company, Engine No. 110 underwent considerable repairs in the shops of the Cuyahoga Valley Railway Company.

On June 7, 1956, Engine No. 110 was shipped to the General Electric Company for a complete redesign and remanufacture job. The nature of this project consisted in changing the prime mover of the total system from two large, heavy, slow speed devices of a certain horsepower to two relatively small, light, high speed devices of larger horsepower capabilities. In turn this major change effected multiple changes of other vital parts of the total power unit. The engineering requirements for this project were unique and specific in itself.

On February 9, 1957 Engine No. 110 was received on The Monongahela Connecting Railroad Company property from the General Electric Company and put into service.

During the period of time from 1954 to 1957, Engine No. 110 was only one of several locomotives of The Monongahela Connecting Railroad Company on lease to other railroads.

Upon the engine's return to the carrier's property after having been redesigned and remanufactured by the General Electric Company, the organization protested the remanufacture of Engine No. 110 by General Electric Company.

On March 3, 1957, the general chairman of the C.I.O. notified the carrier that they did not accept the carrier's decision with respect to the contracting out of Engine No. 110.

Sometime after March, 1957, the carrier and the organization agreed to hold the grievance on Engine No. 110 in abeyance pending a decision on Engine No. 111. On March 28, 1958 the carrier confirmed that such an understanding had been reached and acknowledged its existence in a letter of this date. The carrier and the organization agreed to a joint statement of facts to be presented to the Second Division of the Railroad Adjustment Board for hearing and decision on Engine No. 111. It was also agreed that a submission for Engine No. 110 would be forwarded to the Second Division, NRAB.

At the meeting on February 24, 1958 the carrier advised the organization that it had permitted The Cuyahoga Valley Railway Company to contract out Engine No. 110 because:

(a) The Carrier did not possess the necessary skills and technical knowledge among its motive power employes for an undertaking of such proportions, nor had it ever performed work of this nature.

(b) The carrier did not possess the necessary tools or equipment for such an undertaking.

(c) The carrier did not possess the necessary facilities for such an undertaking.

(d) The carrier received the insurance of a new locomotive warranty from General Electric Company.

(e) The carrier does not have the necessary engineering personnel for such an undertaking.

(f) The work is impossible of performance on this property.

Every reasonable effort has been made by the parties to decide this dispute in conference. Failing to reach adjustment in this matter, we have referred by a petition of the parties this dispute to the Second Division of the National Railroad Adjustment Board.

POSITION OF EMPLOYES: The union's position is that the carrier is in violation of Articles 34 and 37, and is based on the fact that the carrier arbitrarily and unilaterally contracted work out on Engine No. 110 to an outside concern, (General Electric Company) and that by its action, the carrier deprives bargaining unit members of work that has been theirs in the past. It also denies to its employes their seniority rights to perform the work and that many employes of the carrier lost earnings as a result.

"We think that the 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. 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.

3. The Statement of Claim is in the form of a protest and contains no request for punitive damages.

The statement of claim reveals that the employes claim that the carrier, on granting the contract to the General Electric Company to redesign and remanufacture Engine No. 110, violated Article 34.

It will be noted in the statement of claim that the employes have not requested punitive damages as a result of the violation, nor is there a penalty clause to provide a specific penalty in Article 34. The employes simply request that your Honorable Board sustain their protest of the carrier's decision, without notice, to contract-out the redesign and remanufacture of Engine No. 110.

CONCLUSION

The carrier has shown that the work in question is impossible of performance by the carrier because of the lack of necessary facilities, necessary equipment and necessary skills, and consequently its action in contracting this work to the General Electric Company was a justifiable exercise of its prerogative and your Honorable Board is urged to so hold.

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.

The work contracted out here is substantially the same in character as that in Award 3479 (this day decided). An identical type of locomotive is involved. The only significant differences between the two cases are that the subject locomotive was under lease to another carrier at the time the respondent carrier authorized its shipment to General Electric for the necessary work, and that Management failed to explain the situation beforehand to the Local Grievance Committee.

By failure to make this advance explanation to the organization as required by Article 34(b) of the agreement, it is clear that the Carrier violated the contract and that the claim as presented must be sustained insofar as it relates to this article.

In the statement of its position as submitted to this Board the organization requests that the roundhouse employes concerned be compensated for loss of earnings, computed on the basis of the hours of work spent on the subject

locomotive by the General Electric Company. We note, however, that the claim as progressed on the property and as reproduced in the joint statement of facts submitted to the Board contained no reference to a request for compensation. The fact that the claim presented in the companion case (Award 3479) contains a request for money payment indicates the petitioner's awareness that it is not the policy of the Board to award compensation when none is requested in the statement of claim.

AWARD

Claim sustained to the extent indicated in the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1960.