Award No. 3608
Docket No. 3335
2-C&NW-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That employes of the Electrical Workers' Craft on the Chicago and North Western Railway have been unjustly damaged since March 18, 1957, due to the Carrier abolishing all jobs in Waukesha Repair Shop at California Avenue and discontinuing the repairing, rebuilding and overhauling of the electrical equipment on Waukesha Ice Engines and Waukesha Generators and sending Waukesha Ice Engines and Waukesha Generators out for overhauling and repairs and having said work performed by those not covered by current agreement.

2. That accordingly, the Carrier be ordered to compensate the employes on seniority roster at California Avenue Coach Yard, twelve hours for each unit sent out to an outside contractor for overhauling and returned to property for application to C&NW passenger equipment since March 18, 1957 until this dispute is settled and above mentioned work returned to the property of the Carrier.

EMPLOYES' STATEMENT OF FACTS: Prior to March 18, 1957, and since 1936, the carrier maintained a Waukesha repair shop at California Avenue Coach Yard, in which all Waukesha Ice Engines and Waukesha Generators were overhauled in their entirety by federated craft employes, where the electrical workers performed the electrical work on the above mentioned units to a completion. The work consisting of the following:

"As Unit comes into shop, magneto and starter are removed from ice engine and sent to the electrical shop for overhauling. Next step we remove oil pressure and temperature switches for checking, all wiring checked, replacement made if necessary, vacuum switch and solenoid valve removed for checking.

or scrapped. It has never conceded to any organization, including the organizations represented by System Federation No. 12, that it is obligated to permit the employes covered by that agreement to repair an unserviceable item merely because it is repairable. It has never conceded that it is in any way restricted by agreement to the extent that it is prohibited from purchasing replacement parts in lieu of repairing unserviceable parts. This is true whether the part is a single isolated piece, or an entire piece of equipment, or air conditioning equipment such as is involved in this case.

The claim here before this Board is in reality an attempt on the part of the organization to secure through an award of this Board what they have never secured, and in fact never asked for in negotiations on the property, that is, a rule which deprives the carrier of the right to determine whether or not its equipment should be repaired.

The carrier submits that this claim must of necessity be denied in its entirety.

While as the carrier has indicated, it does not believe there is any basis for a sustaining award in this case, and certainly there as been no showing that the agreement between this carrier and System Federation No. 12 has in any way been violated, the carrier wishes to point out that even if it is assumed that there is any basis for the claim here before the Board the claim as presented is not proper. The claim as presented to the carrier apparently was on behalf of certain employes, "each claiming 12 hours, * * *." The carrier has never been informed as to the basis for the claim for 12 hours each. Admittedly the employes did not perform the work for which they claim additional compensation. The carrier assumes that the claim in fact is for 8 hours at overtime rate, or the equivalent of 12 hours at straight time rate for each employe. However, under decisions of this Board the proper method of computation for employes deprived of employment is the straight time rate, not the overtime rate. The maximum amount to which any of claimants would be entitled therefore would be 8 hours at straight time rate for each day deprived of employment.

Additionally, there has been no showing during the course of handling of this case on the property that had the carrier elected to repair the air conditioning equipment instead of disposing of it that all of the claimants would have been utilized. In other words, the carrier does not believe the Board is justified even if it assumes the claim has merit, in sustaining the claim as presented simply because it was presented when there is a complete lack of any evidence to show the "loss" on which the claim was based.

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.

In brief, the Organization asserts that Carrier is farming out to Triangle Engine Rebuilders the overhauling and repair of the electrical equipment

on its Waukesha Ice Machines and Generators; that this work formerly had been done by its employes, and that they have the skill, experience and adequate equipment and shop facilities to perform it now. It further asserts that Triangle performs such work only for the one Carrier and it sets out the numbers of the generators and ice units sent to Triangle and shows their return, as identified by their frame numbers, and asserts that they were only overhauled and sent back without substantial change except for the addition of an hour meter clock.

To the contrary, Carrier asserts that because of the excessive number of failures in its air conditioning equipment it determined not to continue having such equipment overhauled and entered into agreement with Triangle to sell to it the generators and ice units when in need of overhauling at an agreed price per unit and to purchase from Triangle its guaranteed Triangle Power Plus generators and ice units at an agreed price per unit.

Carrier further asserts that the units sold and delivered to Triangle were not merely overhauled by Triangle but that with like units purchased from other railroads and the Pullman Company they were torn down and every removable part removed; that many of these parts were discarded or rebuilt and so changed and improved as to be materially different from and better than those originally used, and that from these new and rebuilt and improved parts new units were built, no part of which except the frame was identifiable with any unit purchased.

Carrier further asserts that although it possessed the equipment and buildings adequate for overhauling these units, it did not possess the equipment or buildings adequate for the improvement and remanufacture of the units as made by Triangle; that it would cost an estimated $500,000.00 to procure the specialized equipment and machinery adequate for that work; that in addition it would require a building with four times the area of the existing building, the cost of which had not been estimated, to house the necessary equipment and work for remanufacture of these units as done by Triangle.

Carrier further asserts that the units purchased from Triangle are superior to the original units purchased from Waukesha and carry a guarantee against faulty material or workmanship for 3000 hours or one year; that neither its employes nor supervisors are qualified for such remanufacture as made by Triangle; that it has never been done by them; that its employes of these crafts still perform the necessary repair work on these units to insure their operation and that the number of employes of the three crafts involved now employed per car to perform work on this equipment has not decreased since its agreement with Triangle.

If the assertions made by the Organization are supported by the facts Carrier has been farming out work which belonged to its employes. If the assertions made by Carrier are supported by the facts the work performed by Triangle is not in violation of the schedule agreement.

We cannot determine these disputed and essential facts from the submissions before us and the claim must be returned to the property for further showing and determination of the pertinent facts as above noted.

AWARD

Claim remanded to the property as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1960.