Award No. 3610
Docket No. 3348
2-C&NW-MA-'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. (Machinists)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Machinists of the Chicago & North Western Railway have been unjustly damaged on or about May 14, 1957 to July 11, 1957, July 11, 1957 to August 27, 1957, August 27, 1957 to October 22, 1957 and continued to date, due to the Carrier contracting out the overhauling and repairs of Waukesha Ice Engines and generators to an outside concern.

2. That accordingly, the Carrier be ordered to compensate the following Machinists for 224 hours at pro rata rate to be equally divided among the claimants:

J. P. Carmosino, T. Semenoff, G. E. Reichard, Fred J. Matzke, Bill Kolomijec, Joseph E. Olechonwicz, Herman Pett, Harry F. Brown, L. C. Steffy, E. P. Mosier, T. R. Bennett, Thomas Caldwell, A. Sicoli.

For the violation from July 11, 1957 to August 27, 1957, 320 hours to be equally divided among the following claimants:

J. E. Stocks, L. R. Steffy, Bill Kolomijec, Tom Caldwell, Marian Semenoff, Joseph Olechnowicz, Thomas Bennett, Edward Mosier, G. E. Reichard, J. P. Carmosino, A. Sicoli, H. Pett.

For the violation from August 27, 1957 to October 22, 1957, 344 hours to be equally divided among the following claimants:

H. F. Brown, Bill Kolomijec, Thomas Caldwell, Marian Semenoff, J. E. Stocks, L. R. Steffy, E. P. Mosier, T. R. Bennett,

ings made, are not in violation of the classification of work rule of the Electricians' Agreement."

The carrier submits that on this property it has always retained the right to determine whether or not any unserviceable item should be repaired 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 unservicable 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 has 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 that they be compensated "224 hours", "320 hours" and "344 hours". The carrier has never been informed as to the basis for the claim for these hours. Admittedly the employes did not perform the work for which they claim additional compensation.

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.

This claim involves similar agreement and the same facts and contentions as considered in Award No. 3608 of this Division and like award should follow here.

AWARD

Claim remanded to the property for determination of pertinent facts.

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.