

Award No. 3639

Docket No. 3460

2-ATSF-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

**ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
— WESTERN LINES —**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current controlling Shop Craft's Agreement, the Employees of the Machinist Craft at Albuquerque, New Mexico, claim they have been unjustly dealt with and that the provisions of Rule 51 and Item 27 of Appendix "B" of that agreement have been improperly applied by the carrier account they contracting to outside firms the fabrication of hydraulic hose assemblies used on carrier roadway work equipment machinery.
2. That responsible carrier management be instructed to cease the practice of contracting this work to others and to restore the fabrication of such hydraulic hose assemblies to the Employees of the Machinist Craft at Albuquerque.

EMPLOYEES' STATEMENT OF FACTS: At Albuquerque, New Mexico, the carrier maintains its largest roadway equipment repair shop which is fully equipped to make any and all repairs to roadway work equipment, including its component parts and appurtenances thereof. This shop is classified by the carrier as the Centralized Work Equipment Shop, hereinafter referred to as the C.W.E. Shop, and receives for overhaul and repair roadway mechanical equipment from all points and divisions on the carrier's railway system.

The C.W.E. Shop is competently staffed by adequately trained and commensurately skilled machinists capable of making any and all repairs to equipment as needed. This shop is equipped with virtually every conceivable type of machine tools necessary to the efficient overhaul and repair of equipment coming into the shop. In 1955, the carrier installed in the C.W.E. Shop tools, devices and testing equipment specifically designed to efficiently and economically fabricate and assemble hydraulic hose assemblies. At the time dispute was initiated at the local point of origin, the carrier had on stock in the C.W.E. Shop at inventory in excess of \$5,000.00 worth of hydraulic hoses, fittings, et cetera used to fabricate and assemble the hoses in question.

Equipment Shop at Albuquerque, New Mexico) that involved the identical principle herein involved, i.e., the right to perform work upon equipment that did not yet belong to the carrier.

It is therefore clearly evident that the carrier is within its rights in purchasing hydraulic hoses completely assembled at Albuquerque, New Mexico, that such handling does not violate the rules of the current shop crafts agreement and is in complete accord with an established principle of this Board.

In conclusion, carrier requests that the claim of the employes in the instant dispute be either dismissed or denied in its entirety for the reasons that:

(1) The dispute is improperly before this Board by reason of the employes' failure to initiate and progress it in accordance with Rule 33 of the current shop crafts agreement and Title I, Section 3, First (i) of the amended Railway Labor Act and:

(2) The claim is without merit under the rules of the current shop crafts agreement, for the reasons hereinbefore expressed.

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 dispute arose from carrier's contract with the Lively Equipment Company of Albuquerque, New Mexico for the fabrication of hydraulic hose assemblies for use on carrier's roadway work equipment machinery.

The organization utilized an improper channel for processing this claim; however, it is significant that the means to be used in protesting a purchasing policy apparently were not clear to either the organization or the carrier's local officials.

Two factors govern in this claim.

In the first place the distinction between the following important principles became blurred: (1) the carrier retains the right to buy or sell supplies or equipment; and (2) the carrier may not "farm out" or contract work encompassed by the scope and classification of work rules of the agreement to outside interests except as provided for in Item 27 of Appendix "B". The work claimed by the machinists was the fabrication of new hose assemblies and the purchase of these assemblies resembled the "farming out" of this work from the machinists into an outside shop, no better equipped or manned,

doing identical work. The resemblance was superficial. The machinists cannot successfully claim work involving supplies not yet purchased nor control the form in which they will be purchased relying on the controlling agreement.

The second factor concerns whether this work was machinists' work. The Board is aware that purchasing programs might be undertaken in bad faith for the purpose of defeating the employees' work jurisdiction. However, the work in question had not been exclusively machinists' work as a matter of practice. The claim of the organization rests upon a brief period during which the carrier evidenced dissatisfaction with its former suppliers, tried the fabrication of hose assemblies on the property, then turned to the Lively Equipment Company for a solution to this problem. This work does not appear in Rule 52, but the carrier recognized that, if done, this work would be assigned to machinists. At the same time the carrier made no commitment overriding its right of choice between fabricating or purchasing the hose assemblies.

The Board holds that the carrier did not improperly apply Rule 52 or Item 27 of Memorandum "B" in the agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January, 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3639

The majority in the findings under "(2)" say, "* * * the carrier may not 'farm out' or contract work encompassed by the scope and classification of work rules of the agreement to outside interests except as provided for in Item 27 of Appendix 'B.' * * *."

Then further in the findings they say, "* * * but the carrier recognized that, if done, this work would be assigned to machinists. * * *."

Since the work was not in the exceptions the carrier had no right to contract out the work—therefor the award is erroneous.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink