Award No. 3731
Docket No. 3538
2-CRI&P-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson, 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 & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly contracted out the re-winding of twelve traction motor armatures and one cooling fan during the period of August 19 to and including August 23, 1955 to be performed by employes of contractors not subject to the current agreement.

2. That, accordingly, the Carrier be ordered to compensate the Claimants who were assigned to this class of work, at penalty rate, for the number of hours required to perform the above mentioned work according to electric shop records.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, employes regular assigned forces in their electrical repair shop at Silvis, Illinois, to perform, among other duties, the work set out in Part 1 of the claim above.

The carrier sent twelve traction motor armatures to Electro-Motive Division of General Motors for re-winding and received twelve re-wound armatures in return.

One Type 1666R cooling fan was contracted out for repairs and received one repaired cooling fan in return.

This dispute has been handled with all carrier officials designated to handle such disputes, all of whom have declined to make adjustments satisfactory to the employes. The agreement effective October 16, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing statement of dispute is adequately supported by the terms of the aforementioned controlling agreement made in good faith between the carrier and System Federation No. 6 in pursuance of the amended Railway Labor Act, because:

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted armatures received on unit exchange purchase orders for older armatures bears more resemblance to the purchase of new ones than to the maintenance and rebuilding of old armatures.

We submit, again, without relinquishing our position as above, that the names of claimants not being furnished or a matter of record in this case, that, even if claim had merit, which we deny, there is no showing of loss or damage to any individual by name. It is also our position, as upheld by this and other Divisions of the Adjustment Board, that there can be no penalty, much less at time and one-half rate, for work not performed.

The employes' organization in this case are in agreement with the carrier's statement that these armatures were sent to Electro-Motive Division of General Motors Corporation on a unit exchange basis, as per sixth paragraph of the general chairman's letter of February 24, 1959, reading:

> "We are in agreement that these armatures were sent, to EMD on and exchange basis for rewinding. This is the basis for our claim."

The carrier and employes, therefore, are in agreement that these armatures were handled on a unit exchange basis and, therefore, this same question and same type of case from this property has been before your Board on previous occasions for hearing in Awards 3228, 3229, 3230, 3231, 3232 and 3233 (Referee Ferguson) and 3269 (Referee Hornbeck), all of which were rendered in favor of this carrier. Further, Awards 2377, 2922, 3158, 3184 and 3185 have also upheld carriers in similar cases.

On basis of the fact and circumstances recited in the foregoing, we contend there was no violation of the employes' agreement.

We respectfully request your Board to deny this Claim

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 question is whether the carrier "improperly contracted out" the rewinding of twelve traction motor armatures and one cooling fan when, instead of repairing them in its shops, it traded them in to the manufacturer on a unit exchange basis in return for remanufactured, modified and upgraded replacement parts with the manufacturer's new warranty.

This division has held in Awards 2377, 2922, 3158, 3184, 3185, 3228, 3229, 3230, 3231, 3232, 3233 and 3269 that such unit exchanges do not constitute the contracting or farming out of work or the violation of agreements not materially different from the one herein involved.

It is uncontradicted that the equipment parts retired from service were worn out and that those acquired in the exchange were upgraded and modernized. The maintenance of its equipment is a part of Carrier's transportation business, but the re-manufacture, improvement or replacement of worn out or obsolescent equipment is not. It is the function of management to determine when such equipment should be replaced rather than being further repaired. Here the claim is not that this function of management was abused, but that the work could have been done by Carrier's employes in its own shops. The latter contention is disputed by the Carrier and remains an unresolved question of fact, even if the work did not constitute a matter of manufacturing, re-manufacturing or improvement rather than maintenance. It is immaterial that the replacement was made by remanufactured parts rather than by new ones.

Under these circumstances it is unnecessary to determine whether under this Agreement unit exchange replacements would be permissible in lieu of ordinary maintenance repairs by Carrier's employes in its own shop.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of April, 1961.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3731, 3732 and 3733.

In the findings of the majority in Award 3731 they recognize that electricians' work was performed on these traction motor armatures and cooling fan stators.

The electricians' Classification of Work Rule No. 101 of the current agreement reads in part as follows:

> "Electricians work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all . . . and . . . winding armatures, fields, magnet coils, rotors, stators, transformers and starting compensators; . . . and all other work generally recognized as electricians' work."

The work of rewinding armatures and stators comes within and is subject to the provisions of the above rule and has been performed by this carrier's electricians. (See Award 1943 of this Division.) Further, under date of August 4, 1948, the scope rule of the current agreement was changed to prevent the assignment of work to other than employes covered by this agreement and reads in part as follows:

> "It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maint. of Equip. Depts. and in other departments of this railroad . . . **and is to prohibit the carrier from hereafter unilaterally assigning the work specified**

in this agreement to other than employes covered by this agreement . . ."

When the carrier assigned this electricians' work to other than employes covered by this agreement, they violated said agreement.

Therefore, the majority's award is in error and we are constrained to dissent.

/s/ Edward W. Wiesner

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey