

Award No. 3740
Docket No. 3765
2-CRI&P-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell 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 AND PACIFIC RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly sent out for repairs 19 traction motor armatures during the period April 1 to 29, 1959, to be performed by other than employees covered by the agreement.

2. That accordingly the carrier be ordered to compensate the following named Electrical Workers at penalty rate, in the amount of labor charged to perform the above-mentioned work.

Dunahugh, Vern	Loding, William J.	Ziegler, Harold A.
Smith, Melville C., Sr.	Cord, LaRue K.	Graham, Jess D.
Barnhart, Claude M.	Randall, Harry L.	Hanneman, Glenn R.
Rusland, Claude A.	Naab, Joseph P.	Meyers, Byron
Poehls, Edward E.	Addison, Pete	Merreighn, Francis E.
Castor, Harry	Carson, Donald F.	Birlew, Chas. G. Jr.
Valentine, Ervin R.	Poehls, Earl G.	Bell, Robt. L.
Shaw, Thomas L.	Corder, Carl	Keopple, Donald B.
Smith, Mellvill C. Jr.	Brokaw, Harvey L.	Orr, Everett L.
Lear, Lowell G	Brock, Ralph K.	Larson, John
Papish, Martin J.	Carruthers, Paul P.	Buck, Merlyn V.
Frery, Robt. C.	Smith, Wallace L.	Boney, James R.
Spurr, Edwin E.	Holloway, Averill H.	Marner, Arthur W.
Koehler, Paul W.	Thompson, Geo. R.	Brown, David C.
Ickes, Howard A.	Anderson, Robt. E.	Claeys, Herbert
Coram, Edward A.	Hobbs, Jack N.	Leedham, Howard
Virnig, Louis J.	Bowden, Orren B.	Barns, Dale H.

Ayers, Vernon L.	LePera, Dominick	Miller, Fred R.
Hardi, John	Lewis, Herbert C.	Hall, Emmett M.
Alexander, Wm. P.	Martin, Alvin W. Jr.	Krantz, Raymond E.
Sherwood, Ishmael S.	Herlehy, John L.	Roemer, James A.
Bennett, Joel H.	Vollert, Harry	Kulhavy, Gerald W.
Borden, Roy A.	Akins, Johnie R.	

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, employs 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.

During the period involved in this dispute, the carrier sent 19 traction motor armatures to outside concerns as follows:

"Serial No.	Date	Serial No.	Date
293	4- 1-59	none	4- 8-59
A39348	4- 1-59	none	4- 8-59
none	4- 9-59	none	4- 9-59
none	4- 9-59	none	4- 9-59
1599337	4-23-59	A39235	4-27-59
A7690	4-27-59	A35765	4-27-59
A3982	4-27-59	A42844	4-27-59
9479	4-28-59	A9937	4-28-59
A11685	4-28-59	none	4-28-59
A13622	4-29-59"		

These outside concerns sent the carrier repaired armatures with the repair charge being that of the charge for labor and materials to repair the armatures sent to them by the carrier. Typical examples are those of traction armatures having serial members A39235, A11685 and A13622.

Armature No. A39235 was sent to the National Electric Coil Company on April 27, 1959 in exchange for a repaired armature which had been sent to the carrier on April 20, 1959. On June 6, 1959, after repairing Armature A39235 the National Electric Coil Company billed the carrier for labor and materials in the amount of \$393.12 for labor and \$917.80 for material, for a total of \$1,310.92.

Armature A11685 was sent to Electro-Motive Division on April 28, 1959 in exchange for a repaired armature ordered on March 30, 1959. On July 7, 1959, after repairing armature 11685, the Electro-Motive Division billed the carrier for labor and materials in the amount of \$430.11 for labor and 1,779.34 for material, for a total of \$2,209.45.

Armature A13622 was sent to the Electro-Motive Division on April 29, 1959 in exchange for a repaired armature ordered on March 30, 1959. On June 2, 1959, after repairing armature A13622, the Electro-Motive Division billed the carrier for labor and materials in the amount of \$244.48 for labor and \$900.71 for materials for a total cost of \$1,145.19.

chase orders for older armatures bears more resemblance to the purchase of new ones than to the maintenance and rebuilding of old armatures.

We submit without relinquishing our position as above, that, even if claim had merit, which we deny, there is no showing of loss or damage to any individual. 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 rates, for work not performed.

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 facts and circumstances recited in the foregoing, we contend there was no violation of the employees' 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 waived right of appearance at hearing thereon.

Carrier retired from its service 19 traction motor armatures, and they were shipped to Electro-Motive Division of General Motors Corporation General Electric Company, and National Coil Company on a unit exchange basis.

These armatures therefore ceased to be the property of the Carrier, and became the property of the above Companies.

The Carrier received in exchange on unit exchange purchase orders 19 remanufactured and upgraded armatures which carried new warranty. These armatures had never before been on the Rock Island property.

There is nothing more involved in this case, but the trading of old property to apply on the cost of new equipment. This the Carrier had a right to do, and the agreement was not violated.

Similar claims, many on this same Carrier have been resolved against the organization by this Division in Awards 3158, 3159, 3184, 3185, 3228, 3229, 3230, 3233 and 3269.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 28th day of April, 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3739, 3740, 3741

We consider as erroneous the awards accepted by the majority as authority for denying these claims. Under the circumstances we consider it unnecessary to do other than incorporate herein by reference our dissents to the awards cited by the majority as giving weight of authority for denying the instant claims.

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ James B. Zink