Award No. 4019
Docket No. 3796
2-SOU-MA-'62

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. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current agreement the Carrier engaged independent contractors to install and erect new machinery at the Carrier's Coster Shop at Knoxville, Tennessee.

2. That on account of this contractual violation twenty-three (23) machinists and twenty (20) machinist helpers were wrongly furloughed, while work contracted to them under current agreement rules, was performed by individuals who had no contractual rights to the same.

3. That the Claimants be reimbursed in the amount of full pay at the pro-rata rate respectively for July 6, 1959, and for each and every subsequent day thereafter as long as the independent contractors are engaged in the installation and erection of new machinery at Coster Shops, Knoxville, Tennessee. Claimants are named and identified by classification in Attachment "A".

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Co., hereinafter referred to as the carrier, at its Coster Shops at Knoxville, Tennessee, operates a wheel and axle shop which supplies the major part, if not all, of the new and reconditioned wheels and axles for cars to the entire system.

Prior to July 6, 1959, carrier employed a large force of skilled machinists and machinist's helpers at Coster Shop. In addition to the actual production of wheels and axles these employes from time to time made modifications to shop machinery and installed and erected new machinery.

The Board cannot in the light of the agreement, the established and recognized practices thereunder and prior Board awards do what the employes and their representatives here demand.

The claim being without basis and unsupported by the agreement in evidence, the Board cannot do other than make a denial award.

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 claim is that the Carrier engaged independent contractors to install and erect new machinery at its Coster Shop at Knoxville in violation of the Agreement; that as a consequence twenty-three machinists and twenty machinist helpers were furloughed; and that they should be compensated at pro-rata rate for July 6, 1959, and for as long thereafter as the contractors continued the installation and erection of the new machinery.

Carrier entered into an agreement with general contractors for the construction of a new automated wheel shop, including the installation of new machinery. The claim is that the machinery should have been installed by the Carrier's employes under the Agreement.

The Carrier contends that Classification of Work Rule 61 and associated Rules 62, 63 and 64 merely identify certain types of work performed by machinists and helpers and do not confer exclusive rights upon them; that they do not imply that machinists and helpers employed to repair and maintain equipment shall constitute a construction force; and that the installation and erection of new machinery in a newly constructed shop is not of a character usually, customarily or traditionally performed by machinists under the Agreement.

While all of the work involved in the project, including the concrete work and construction, apparently was of kinds performed by various classifications of Carrier's employes in its regular operations, and it appears that only the machinists have filed a claim, that circumstances is not material to the questions presented here.

The record shows at least seventeen occasions, one of them in 1925 and the others in the 1940's and 1950's, in which installation work has been done as part of a contracted construction project, and there is no showing in the record that such projects, or the installation of the machinery thereof, have ever been done by the Carrier's regular force, or that it is adequate or able to do so with the equipment available.

The machinery of the old wheel shop was removed by the Carrier's machinists after an advance supply of wheels had been prepared in preparation for the change. Certain employes were furloughed on July 6, 1959, but two of the machinists and three of the helpers named had been furloughed

earlier, and most of the machinists and several of the helpers worked for substantial periods during the time involved in the claim.

The new equipment, consisting of eight separate items of machinery, was installed between July 22 and October 9, 1959, apparently as the necessary foundations were completed and the machinery delivered. The new wheel shop consituted a major undertaking and the installation of the machinery was a very minor part of it. How much time was actually consumed in that part of the work, on what days, or by how many men, cannot be determined from the record; and those are matters which cannot be ascertained on the property, since the work was performed by the general contractor. Consequently there is no way to determine which of the claimants could have been used on days when they did not work, or how much time would have been involved for them.

In any event, there are many awards holding that a carrier is not required to split up work so as to retain part for performance by its employes where the whole project is such as to warrant the carrier, in the reasonable exercise of its managerial judgment, to contract the work. Awards 2186, 3278, 3433 and 3559; Third Division Awards 3206, 4954, 5304 and 5563.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4019.

Contrary to the findings of the majority in Award No. 4019, the type of work subject of this dispute is spelled out in Machinist Rule 61 and Machinist Helpers Rule 63.

It is fundamental that work covered by a collective agreement with employes cannot be contracted out to others. Here it is revealed the work performed by the outside contractor involved work that is clearly a machinist and helper function and is, in fact, covered by the existing agreement. The language of the agreement cannot be made to mean different things at different times. Therefore the majority contrary to legislative intent failed to adjust this dispute in conformity with the existing agreement.

Thus we dissent to Award No. 4019 as being in error.

C. E. Bagwell
T. E. Losey
E. J. McDermott
Robert E. Stenzinger
James B. Zink