

Award No. 4067
Docket No. 3904
2-NYNH&H-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O.
(Electrical Workers)

THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the employees in the Mechanical Department were unjustly damaged and the provisions of the current agreement were violated when the Carrier elected to contract out the repairs of traction motors, and component parts to the General Electric Company at North Bergen, New Jersey.

2. That accordingly the carrier be ordered to compensate the employees so damaged as follows:

J. Nobile — 64 hours-time and one half.

W. Vernon — 64 hours-time and one half.

EMPLOYEES' STATEMENT OF FACTS: That electrical workers J. Nobile, and W. Vernon, hereinafter referred to as claimants, and employed by the New York, New Haven & Hartford Railroad Company, hereinafter referred to as the carrier, in the mechanical department and assigned to J. A. Croke, Supt., at the New Haven Maintenance of Equipment Shop.

The claimant electrical workers are regularly assigned, and qualified to perform electrical work on all of the carrier's motive power, and equipment.

On May 25, 1959, to June 16, 1959, traction motors of the 752 type series were sent to the General Electric Company at North Bergen, New Jersey for electrical work, and repairs.

The following numbered traction motors were sent to the General Electric Company at North Bergen, New Jersey on May 25, 1959, for electrical repairs: #2305648, #2382511, #2382642 and #2382684, and were returned to the New Haven Maintenance of Equipment Shop on June 15, 1959, and June 23, 1959, fully repaired.

difficulty with this request is that any such employe would be outside the seniority district in which the subject Porter position existed. **We do not see that an employe in a different seniority district has a contract right to this work.** We have been unable to find a previous case in which this Board has awarded compensation to an employe in a seniority district other than the one in which the disputed work arose. No basis appears for directing the requested compensation in the present instance."

There is no basis for the claims presented as these employes were fully employed during the period of the claim and would have no right to the work in any event.

III

B

That the New Haven Maintenance of Equipment Shop was not equipped for performance of the disputed work

We submit that there can be no dispute on the fact that the New Haven Maintenance of Equipment Shop was not, and is not, equipped to perform major overhaul and repairs to the electrical components as referred to in the instant claims. This cannot be successfully refuted by the general chairman.

The contention by electrical workers at the New Haven Maintenance of Equipment Shop that they were damaged by the carrier's decision to sell certain unserviceable electrical components is simply without basis in fact. The decision to sell unserviceable equipment had absolutely no effect on claimants. In any event, these claimants had no seniority right to perform such work and in no manner would it have been possible to perform such work at New Haven.

We respectfully submit the claims are without merit and should be denied. Summarizing, it has been shown:

1. That the decision to sell unserviceable equipment and purchase factory warranted replacements is a proper exercise of managerial prerogative—not violative of the agreement between the parties.
2. Having sold the disputed equipment, the rules cited by the organization are not applicable.
3. That Messrs. Nobile and Vernon would in no event be entitled to compensation inasmuch as:
 - (a) They had no seniority which would entitle them to compensation here claimed and
 - (b) They were fully employed and at a seniority point which was not equipped for major electrical work.

For all of the reasons set forth herein, carrier respectfully submits that the claims should be denied in their entirety.

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.

The conclusion to be drawn from Award 4066 is that where, in a case involving alleged contracting-out of repair or re-conditioning work covered by agreement with a labor organization, the organization can show that (1) a carrier had the necessary men, parts, and equipment to perform the work; (2) the units returned (sold back) to the carrier by the outside firm were essentially the same as those earlier shipped and sold by the carrier to said outsider; and (3) the identity of such units was not lost in the general pool of the outside firm, the Division will sustain the claim in the case.

In the instant case petitioner has failed to sustain any of the above burdens by its submission of facts. Accordingly, the Division must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1962

DISSENTING OPINION OF LABOR MEMBERS TO AWARDS NUMBER 4067 and 4068

Rules 29, 101 and 123 of the current Agreement read in part as follows:
‘Rule 29

Assignment of Work

‘None but mechanics or apprentices regularly employed as such shall do mechanics’ work as per special rule of each craft, except foreman at points where no mechanics are employed.

‘Rule 101

Classification of Electricians

Electricians’ work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of generators, switchboards, meters, motors, and controls rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage batteries except as provided in Rule 104, axle lighting equipment, electric lighting fixtures and cables: winding armatures, fields, magnet coils, rotors, transformers and starting compensators: inside and outside wiring at shops, building and yards and conduit work in connection therewith, including steam and electric locomotives passenger trains, motors cars, electric tractors, and electric trucks. High tension power house and substation operators, electric crane operators for cranes of 60-ton capacity or over, electrician’s

work performed by employes of the Maintenance of Way Department on tugboats and floating equipment in New York Harbor territory, and all other work generally recognized as electricians' work.

'Rule 123

UNDERSTANDING IN SPECIAL CASES

Armature winders — Van Nest — performing the following work—Rewinding of and major repairs to traction motor armatures and fields, also main transformers.

Dismantling and rebuilding commutators of all types.

Rewinding induction motor stators or rotors, train control dynamotors, headlight and generators, tractor armatures and fields.

Dismantling, repairing, reinsulation and rebuilding all types of preventive coils, reactors and auxiliary transformers.

Stripping, repairing or rewinding all types of axle lighting generator armatures and fields.

Stripping, reinsulation and rebuilding all types main and auxiliary resistors.

Dismantling, reinsulating and rebuilding all types collector rings.

Stripping and rewinding main generator, synchronous motors, exciter generators and starter motors, such as are used on locomotive 0112-16-0216-17.

Stripping and rewinding all types battery or auxiliary generator armatures and fields.

Rewinding all types compressor or blower motor armatures or fields.

Rewinding all other types of auxiliary motor armatures or fields not specifically mentioned above."

As these Awards refer to Award 4066 our opinion is the same and that is we agree with the finding that the Carrier violated the current agreement when the rewinding, repairing and rebuilding of five traction motors was contracted to the General Electric Company.

We do not agree with the conflicting finding that the Carrier did not violate the agreement when the rewinding, repairing and rebuilding of other traction motors, armatures, fields and generators was contracted to the General Electric Company. This violation results in the employes covered by the same agreement not being given equal treatment or equal protection under the law. We are therefore constrained to dissent from this finding.

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