

Award No. 4243
Docket No. 4171
2-NP-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the repairing of diesel locomotive radiators is Sheet Metal Workers' work under the current agreement, through practice and letter of understanding.

2. That on or about November 4, 1960 and again on December 15, 1960 the Carrier elected to send six radiators out of a bank of twelve to the Kelty Radiator Company, Cedar Rapids, Iowa.

3. That accordingly the Carrier be ordered to compensate Sheet Metal Worker A. W. Bredberg 60 hours' pay at the pro rata rate for each period of violation.

EMPLOYES' STATEMENT OF FACTS: The Northern Pacific Railway Co., hereinafter referred to as the carrier maintains at Livingston, Montana its largest diesel locomotive repair shop. This shop consists of many departments including a sheet metal pipe and tin shop fully equipped to clean, test and repair diesel locomotive radiators. In December 1960 there were 17 sheet metal workers employed and working at Livingston. In addition there was employed one sheet metal worker helper and one apprentice sheet metal worker qualified and available for upgrading to mechanic.

On or about November 4, 1960 carrier shipped 6 diesel radiators to the Kelty Radiator Co., Cedar Rapids, Iowa for repair. The radiators were returned to carrier approximately one month later and placed in stock in the storeroom for later use.

On December 15, 1960 twelve radiators were removed from diesel unit 7002c, all in bad order condition. Six of these were repaired by the sheet

The carrier has shown that in October and December, 1960 it unit exchanged twelve retired radiators for twelve serviceable radiators with the Kelty Radiator Company; that in unit exchanging this equipment the Carrier exercised its inherent right; that the carrier's inherent right to unit exchange equipment has not been abrogated or curtailed by the July 1, 1955 shop-crafts' agreement; that this Division in Award No. 2922 disposed of the issue in this docket with finality; and that this Division likewise in awards involving other carriers held that unit exchanging equipment was not in contravention with the rules of the shop-crafts' agreement.

The claim covered by this docket should be denied in its 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 were given due notice of hearing thereon.

The Carrier asserts that on October 25, 1960, it purchased six diesel radiators and on December 6, 1961, an additional six such radiators from the Kelty-Radiator Co., of Cedar Rapids, Iowa, giving twelve second-hand radiators as part of the purchase price. These transactions are identified by incomplete copies of two of Carrier's order sheets of the above dates. These order sheets bear the headings "Unit Exchange Basis," (sic) and state that they were "given and accepted, subject to the condition appearing on the back hereof", but the reverse of said order sheets are not disclosed by the record. It is conceded that the twelve radiators were neither manufactured by or purchased from the Kelty Company, but the Carrier contends that the dispute involves its inherent managerial right to purchase the twelve radiators obtain from Kelty and to give in exchange the twelve retired items as a part of the purchase price. The carrier's right to consummate such transactions in proper cases cannot be doubted and requires no elaboration on our part.

The Employes show, however, that at the time and place where the controversy arose the Carrier had employed 17 sheet metal workers and that its shop was fully equipped to clean, test and repair diesel locomotive radiators; also that the first six radiators shipped to Kelty were repaired by it, returned to the Carrier and placed in the storeroom for future use; and that subsequently, twelve additional radiators were removed from diesel equipment, six of which were repaired by Carrier's sheet metal workers and six sent to the Kelty Co. There is a positive showing on the part of the Employes that before the radiators were sent to Kelty they placed secret marks of identification on them and that at least a part of those so marked were returned by Kelty, evidencing that the repairs made on them consisted merely of cleaning and soldering, the precise kind of work ordinarily performed by sheet metal workers at Livingston.

Rule 112 gives the organization the right to all "work generally recognized as sheet metal workers' work", and a letter of understanding dated

April 3, 1953, specifically recognizes the right of sheet metal workers to repair radiators for diesel locomotives. The Carrier's right to purchase equipment and to trade in used or worn out equipment as a part of the purchase price cannot be questioned, but we are unable to regard the transaction here involved as being of that character. The words, "Unit Exchange Basis", appearing on its order sheets are self-serving in nature and are of doubtful significance in view of the fact that the conditions upon which the orders were given were within the peculiar knowledge of the Carrier but were not disclosed by it to this Board or to the organization. These circumstances, coupled with the showing made by the Employees that at least a part of the radiators sent to the Kelty Co., were merely cleaned, soldered and returned, leads us to the conclusion that the claim is well-founded.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1963.