

Award No. 4296

Docket No. 4117

2-EJ&E-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That the Carrier violated the current agreement when they permitted the National Electric Coil Company to repair eight traction motors.

(b) That accordingly, the Carrier be ordered to compensate Electricians R. Hummo, L. Kenney, L. Eichelberger, J. Buffo, F. Zabkar, V. Camel, C. Colegrove, C. Lumyahn, W. Krnac, A. D'Ottavio, R. Sackman, J. Paul, A. Cormier, W. Stonex, and F. White each in the amount of 32 hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Three years ago the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, installed a traction motor assembly line in their electric shop at Joliet, Illinois. This assembly line has upgraded 98 traction motors and repaired 194 traction motors for a total of 292 traction motors upgraded and repaired.

The carrier instead of permitting their employees working on the assembly line to upgrade and repair traction motors serial and model number D27-3986, D27B-4143, D17B-9963, D27B-262A, D17B-303A, D7-43K4635, D27B-52K613 and D27B-49D542, sent four (4) of these motors on August 10, 1960, and the other four (4) on September 2, 1960, to the National Electric Coil Company, who repaired and returned these same motors to the carriers locomotive shop at Joliet, Illinois.

Due to this the local committee met with Mr. G. W. Burnett, Master Mechanic, and submitted a claim charging violation of the current agreement. Mr. Burnett under date of October 28, 1960, denied this claim on the basis that all electricians available were working and that a General Rule pertaining to sending work out to other companies covered this claim.

Under date of November 15, 1960, we appealed Mr. Burnett's denial to Mr. C. G. Mahoney, Superintendent of Motive Power advising that Rule 30 permitted only employees of the carrier to perform the work involved.

valid reasons for its action in sending out the involved traction motor repair work. It has not followed or pursued an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform. (Award No. 2377)

The work herein involved which was performed by National Electric Coil is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts were within the capacity of the carrier's forces (Awards 3206, 4776, 4954, 5304, 5563 of the Third Division.)

This work was properly performed by National Electric Coil because it required special skills, equipment, and the work was unusual and novel in character as far as claimants were concerned. (Awards 757, 2338, 2465, 3206, 4712, 4776, 5028, 5151, 5304, 5563 and 6492 of the Third Division.)

These same principles were set forth by Referee Carter in Second Division Award No. 1808; and he diligently followed them in Award No. 2377.

In conclusion, the carrier submits that no contractual right of the claimants was abridged when the involved traction motors were sent out for repairs. The claimants never have performed the required work; they are not qualified to perform it; and we do not have the special equipment and machinery to do it. It would be gross error to hold this carrier, the "J", to the same standards and principles that are applicable on large carriers whose size permits adequate qualified personnel and complete traction motor repair facilities. Sustaining awards on such carriers are irrelevant and immaterial to the proper determination of the instant dispute. Specifically in point, there is no competent authority in support of the organization's far sweeping position.

For all of the above shown reasons, there is no semblance of merit in this claim. Accordingly, it should be denied in its entirety by the Board.

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.

On August 10, 1960 and on September 2, 1960, the Carrier sent—on each date—four traction motors on a repair and return basis to the National Electric Coil Company, Columbus, Ohio. The traction motors were repaired and returned to the Carrier on August 26, 1960 and September 20, 1960, respectively.

Rule 30, pertaining to mechanics and apprentices, and Rule 114, pertaining to electricians, are the principal rules involved in this dispute.

In the instant case, the record shows that for approximately twenty-five years—since dieselization was initiated in 1936—the Carrier has followed the practice of having traction motor repairs performed by outside companies on repair and return basis and on a unit exchange and warranty basis. In 1957 the Carrier's improved traction motor repair program permitted the Carrier to

perform more traction motor repair work than heretofore. It did not, however, according to the Carrier, eliminate the necessity for sending out traction motors on a repair and return basis. In fact, the Organization did not successfully refute the Carrier's statement that since 1957 the Carrier had sent out eighty-one traction motors on a repair and return basis.

It is a well-established rule that a Carrier cannot contract out work coming within the scope of collective agreements. However, exceptions to that rule are permissible when it is shown that the work contracted out requires equipment and skills not possessed by the Carrier.

The record indicates that the Carrier has not followed or pursued a course for the obvious purpose of depriving employes of work which they customarily and traditionally perform. The Carrier stated that it "readily recognized that it cannot indiscriminately send out work that might be performed on this property".

The Carrier attempted to justify its actions on the basis of past practice, lack of special shop equipment and lack of requisite electrical skills by its electricians.

Claims and contentions contrary to the Carrier's position must be supported by factual proof in order to overcome managerial judgments and prerogatives in contracting out work. A carrier's managerial judgment cannot be lightly regarded because of the burden the Carrier assumes as a public carrier and also because of its responsibility to its employes.

It is, of course, the responsibility of the Organization to disprove the Carrier's contentions and statements. In this case, the Board believes that the Organization failed to sustain that burden of proof. It is true that the Organization presented proof in its rebuttal statement, but it is the Board's disposition that such evidence must be raised and introduced on the property and included in the initial submission to the Board, otherwise it is inadmissible.

AWARD

Claim denied.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NUMBER 4296

The findings in this Award are not in keeping with the record as the Employes' Exhibit A attached to their submission is a copy of the Master Mechanic's decision to the Employes on the initial claim and reads in part as follows:

"Your time claim as listed below will be processed under the following case number.

NX-6-60 Claim for 480 man hours account of eight (8) EMD-D-7, D-17, D-27 Traction Motors sent to National Coil: four (4) on August 10, 1960, returned August 26, 1960 and four (4) sent September 2, 1960, returned September 20, 1960.

The Electricians' Committee claim the Carrier is in violation of Rule 114 of the Electrical Rules, also that the work is done on the property and has been for some time, that it is desirous to retain the work here.

The above claim denied on the basis all Electricians available are working, also General Rule pertaining to sending work out to other Companies covers this claim." (Emphasis ours.)

As you can see from the above quote the Carrier's position points out that the Local Committee has claimed from the start that the work involved has been performed on the property and that they intended to retain the work for the employees they represent in keeping with the rules of the Agreement. The Carrier denied the claim stating that all Electricians available were working and that a general rule pertaining to the sending out of work to other companies covered this claim.

The Employees' Exhibit B attached to their submission is the General Chairman D'Ottavio's appeal to Superintendent of Motor Power pointing out that the Electricians on the property have always performed this work and that the Carrier even set up an assembly line in their Electrical Shop for the purpose of repairing and rebuilding traction motors and also pointing out that the traction motors involved in this dispute were returned to the Carrier by the National Coil Company and were still unused and laying on the Locomotive Shop floor. This Exhibit reads in part as follows:

"Rule 114 states electricians' work shall consist of repairing, rebuilding, installing, inspecting and maintaining the electric wiring of generators, switchboards, motors and control, etc. We have always performed this work and as you know we have a traction motor assembly line in the electric shop to install coils and to repair and rebuild traction motors. The motors in question after being returned from National Coil Co., are still unused on the floor in the locomotive shop more than a month after being returned." (Emphasis ours.)

"Rule 30 assignment of work rule states in part, "None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft . . ." We were hired and assigned by this carrier to perform this work, we also have the men and the facilities to perform this work." (Emphasis ours.)

The Employees' Exhibit C attached to their submission is the Superintendent of Motor Power's denial of the appeal and it reads in part as follows:

"Be advised that the matter of this claim has been investigated and it is determined that during the time the motors were sent out for repairs the Carrier was having difficulty in producing the electrical work needed with the number of people employed, same because of shortage of electricians, in that heavy repairs were being made to locomotives, 102, 114 and 415, and that not enough Westinghouse Model 370 traction motors were being produced in the Joliet Shop to handle the needs of Class 5 repairs to road locomotive trucks nor to take care of the road failures of No. 370 Model traction motors.

The time claim in question is respectfully declined. As pointed out above, a shortage of electricians existed, and the Carrier is allowed by rule the right to purchase new or have equipment repaired at outside concerns." (Emphasis ours.)

The Carrier again denied the claim on the basis that there was a shortage of Electricians that the Electricians were fully occupied and were unable to produce enough traction motors to take care of the heavy repairs being made and that they were allowed by a rule to purchase new or to have equipment repaired at outside concerns. However, the Carrier still failed to point out what rule gives them this right. And admitted that the employees did do heavy repairs.

The Employees' Exhibit D attached to their submission is the General Chairman's appeal to the Chief Mechanical Officer and reads in part as follows:

"It is my opinion that the carrier has violated the electrical workers special rule 114, and the shop crafts general rule 30.

We have always performed this work, and as you know, we have a traction motor assembly line in the electric shop to install coils and to repair and rebuild traction motors. The motors in question after being returned from National Coil Co. were unused on the floor of locomotive shop for two months after being returned.

The carrier has taken the position that it had a shortage of electricians, yet a total of 10 or more electricians have applied for employment and have been interviewed by Div. Electrical foreman this past summer and fall, and have been turned down. Among these one of our own electricians, a lineman who was furloughed from M. of W. Dept. and recommended by Mr. Waltz, signal engineer. This man had seven years of electrical experience." (Emphasis ours.)

As you can see the Employees pointed out again that the Electricians on the property have always performed this work and refers to the traction motor assembly line that was established by the Carrier to perform this work. He also refers the Carrier to Rules 30 and 114 which supports his position that the Carrier was violating the Agreement. He also pointed out that ten electricians applied for employment, all were turned down and that one of these Electricians was an Electrician, in the employ of the Carrier, who was on furlough.

The Employees' Exhibit E attached to their submission is the Chief Mechanical Officer's denial of the appeal and reads in part as follows:

"I have investigated the circumstances concerning this incident and find that despite the fact that all electricians on the E.J. & E. were fully employed by the railroad, and that a number of them were repairing traction motors, they were unable to repair a sufficient number to meet the needs of the service. There were a considerable number of trucks torn down in the shop awaiting traction motors before they could be rebuilt, and there were a number of locomotives running on the railroad with wheels in worn condition necessitating changeout of wheels and motors in the immediate future. In view of this predicament it was imperative for the railroad to send out the eight traction motors to relieve the congestion in the shop and to be able to maintain the locomotives in satisfactory operating condition in compliance with ICC rules and regulations.

"This work is specifically work of the shop craft electricians. The electrical workers of this Carrier have always performed this work. About 3 years ago the Carrier installed a traction motor assembly line in the electric shop for the sole purpose of installing coils, and to repair and rebuild traction motors, the motors in question after being returned from National Coil Co. were unused on the floor in the locomotive shop for two months.

Rule 30 Assignment of Work Rule states in part, 'none but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft.' We were hired and assigned by the Carrier to perform this work.

The Carrier has taken the position that it had a shortage of electricians, as far back as 5 to 8 years ago, the total number of shop and roundhouse electricians did not exceed 20 without motor assembly line or locomotive rewiring, today we have the same amount of electricians, with added work such as traction motor assembly line and heavy locomotive rewiring work, at the present time rewiring 3 locomotives at a time.

In Bachman's letter of December 23, 1960, declining this claim he states 'during this period a determined effort was made to hire electricians.' It is my opinion that a sincere effort was not made. The ads in the Joliet Herald News were few, and during the time in question and to this day a total of ten (10) or more electricians have applied for employment, and have been interviewed by div. electric foreman and have been turned down. Among these was one of our own electricians, a lineman who was furloughed from M. of W. Dept. and recommended by K. Waltz, Signal Engineer. This man had seven years of electrical experience.

Bachman also states 'prior to the last two years all traction motors were sent out of the E.J. & E. shops to various contract shops for repairs'. I cannot agree with this statement, although we did not replace too many coils or mainpoles as we are now doing, we did tear down and repair traction motors prior to the last two years, whenever traction motors were sent out we were told that it was on a unit exchange basis.

For any or all of the foregoing reasons it is my opinion that this claim is legitimate and should be paid." (Emphasis ours.)

The Employees' Exhibit G attached to their submission is the Vice President's in Charge of Personnel, denial to the appeal, who is the top appeal officer on the property, and reads in part as follows:

"This is in reply to your letter dated January 9, 1961, wherein you appeal Case NX-6-60 to this office for consideration.

After reviewing all the facts in this case, it is the opinion of this office that Mr. G. F. Bachman, Chief Mechanical Officer, adequately stated the Carrier's position in his letter of declination to you dated December 23, 1960. Since you have offered no additional information or argument in your appeal, that letter of Mr. Bachman's is incorporated as a part of this reply and, for the reasons set forth therein your claim is respectfully declined."

This proves that the Carrier on the property used three different excuses to deny this claim and the Employees refuted each one of them, but no where in this record up to this point did the Carrier's representatives claim that the Employees did have the requisite electrical skills or that the Carrier lacked special shop equipment. In fact, the Carrier admitted that the employees did

the work involved but alleged that the reason they sent the work out was that the employes could not produce sufficient number of traction motors.

However, Mr. Verd who is the top appeal officer on the property after writing the above quoted decision which was dated February 13, 1961 he again wrote a letter under date of March 28, 1961 to General Chairman D'Ottavio taking another position by stating that the repair work in dispute requires special skills not possessed by the employes and special equipment not possessed by the Carrier and alleging that the General Chairman agreed with this. A copy of this letter was attached to the Employes' submission and shown as Exhibit H and reads as follows:

"March 28, 1961

Mr. Albert D'Ottavio, General Chairman
International Brotherhood of Electrical Workers
303 Youngs Avenue
Joliet, Illinois

Dear Sir:

Please refer to your letter dated February 19, 1961, wherein you requested a conference for the purpose of discussing a claim identified as Case NX-6-60, which reads as follows:

" . . . time claim for 480 hours pay, in behalf of the following claimants, each claiming 32 hours pay for a total of 480 man hours. R. Hummo, L. Keeney, L. Eichelberger, J. Buffo, F. Zabkar, V. Camel, C. Colegrove, C. Dumyayn, W. Krnac, A. D'Ottavio, R. Sackman, J. Paul, A. Cormier, W. Stonex, and F. White, because on August 10, 1960 and again on September 2, 1960, the carrier sent to the National Electric Coil Co. Columbus, Ohio, via their truck, a total of eight (8) traction motors. serial and model numbers as follows. D27-3986, D27B-4143, D17B-9963, and D27B262A, these were repaired and returned to locomotive shop on August 26, 1960, serial and model numbers D17B-303A, D7-43K4635, D27B-52K613, and D27B-49D542, were repaired and returned to locomotive shop on September 20, 1960.

At conference in my office on March 15, 1961, this claim was discussed.

It was the position of your Organization that the subject work is specifically reserved to employes of the Electricians' Craft by Rule 114 of the controlling Agreement and that the Carrier violated this Rule, as well as Rule 30, when it awarded the work of repairing eight (8) traction motors to the National Coil Company of Columbus, Ohio.

The Carrier answered your charges by stating that none of the repair work performed by the National Coil Company has ever been considered exclusively that of the employes represented by your Organization. Furthermore, it was noted that a substantial portion of such repair work required special skills not possessed by these employes and special equipment not possessed by the Carrier and it was, therefore, necessary that the work be awarded to this outside firm.

In this regard, the Carrier stated that three of the eight subject traction motors had been up-graded and that the armatures and armature shafts had been repaired and dynamically balanced in all eight. When asked if Carrier's employes had ever performed this type of repair work, you again conceded that they had not. There were several additional repair operations performed by this outside firm which you admitted had not been accomplished by Carrier's forces in the past.

During our discussion, the Carrier offered records showing conclusively that repair work identical to the work performed here had been awarded to outside firms on at least eighty-one occasions during the past three-year period while the so-called traction motor assembly line was in operation. This, without objection by your Organization. The Carrier answered your remark (that members of your Organization had always been told that motors sent out to outside firms on these eighty-one occasions were on a unit exchange basis) by stating that they were not sent out on that basis and, further, that whatever sources of information were available to members of your Organization on this present occasion were available also on all of the other eighty-one occasions. Thus, the Carrier would not accept the charge that the members of your Organization had been misinformed during these past several years (insofar as concerns the basis on which traction motors were sent to outside firms for repairs), nor would it now accept the argument that your Organization would have objected previously to this practice had the true facts been known.

In view of the foregoing, your claim is considered to be without merit and is respectfully declined.

Very truly yours,

/s/ PAUL H. VERD
Paul H. Verd
Vice President-Personnel"

General Chairman D'Ottavio under date of April 17, 1961 replied to Mr. Verd denying all of the allegations in his letter a copy of this letter was attached to the Employes' Submission and shows as Exhibit I.

"Mr. Paul H. Verd,
Vice President Personnel,
Elgin, Joliet & Eastern Railway Co.,
208 So. LaSalle Street
Chicago 4, Illinois

Dear Mr. Verd:

This is in reply to your letter dated March 28, 1961, regarding our conference held on March 15, 1961, regarding Case NX-6-60.

In your letter the following appears:

"The Carrier answered your charges by stating that none of the repair work performed by the National Coil Company has ever been considered exclusively that of the employes

represented by your Organization. Furthermore, it was noted that a substantial portion of such repair work required special skills not possessed by these employes and special equipment not possessed by the Carrier and it was, therefore, necessary that the work be awarded to this outside firm.'

We cannot understand the above statement that the work in dispute required special skill and equipment, which was the reason the work was awarded to an outside firm, as you, and all of your subordinates have stated that the reason the motors were sent out was that the Electrical Force was unable to repair a sufficient number of motors to meet the needs of the service. Your letter of decision denying our appeal in this claim, dated February 13, 1961, reads in part, as follows:

'After reviewing all the facts in this case, it is the opinion of this office and Mr. G. F. Bachman, Chief Mechanical Officer, adequately stated the Carrier's position in his letter of declination to you dated December 23, 1960. Since you have offered no additional information or argument in your appeal, that letter of Mr. Bachman's is incorporated as a part of this reply and, for the reasons set forth therein, your claim is respectfully declined.'

You stated that you declined our claim for the reasons set forth in Mr. Bachman's letter dated December 23, 1960. There was no mention of special skill or equipment in Mr. Bachman's letter dated December 23, 1960. His reason for denying our claim was that the electrical force could not repair a sufficient number of motors to meet the needs of the service, as the following appears in this letter:

I have investigated the circumstances concerning this incident and find that despite the fact that all electricians on the E. J. & E. were fully employed by the railroad, and that a number of them were repairing traction motors, they were unable to repair a sufficient number to meet the needs of the service. There were a considerable number of trucks torn down in the shop awaiting traction motors before they could be rebuilt, and there were a number of locomotives running on the railroad with wheels in worn condition necessitating changeout of wheels and motors in the immediate future. In view of this predicament it was imperative for the railroad to send out the eight traction motors to relieve the congestion in the shop and to be able to maintain the locomotives in satisfactory operating condition in compliance with ICC rules and regulations.

This same reason was given by Mr. C. G. Mahoney, Supt. Motive Power, in his letter of decision dated November 26, 1960, as the following appears in his letter:

The time claim in question is respectfully declined. As pointed out above, a shortage of electricians existed . . .

Mr. G. W. Burnett, Master Mechanic, in his letter dated October 28, 1960 denied the claim because all electricians available were working.

In your decision denying our appeal dated February 13, 1961, you agreed with Mr. Bachman's reasons for denying your claim which was to have these motors repaired to meet the needs of the service. In our appeal to Mr. Bachman we pointed out to him that these motors were returned to the locomotive shop on August 26th and September 20, 1960, and they were still unused and laying on the shop floor two months later.

Also in your letter dated March 28, 1961, the following appears:

In this regard, the Carrier stated that three of the eight subject traction motors had been up-graded and that the armatures and armature shafts had been repaired and dynamically balanced in all eight. When asked if Carrier's employes were qualified to perform this type of repair work, you conceded that they were not. When asked if Carrier's employes had ever performed this type of repair work, you again conceded that they had not. There were several additional repair operations performed by this outside firm which you admitted had not been accomplished by Carrier's forces in the past.

I do not agree with this statement at all, as I stated in our conference, that we upgrade and do the repairs to the motors whenever needed. The only part of the operation that I said was not performed by us on the property before, was the dynamic balancing of the shafts, and the only reason we do not perform this work is that the Carrier does not have the machine necessary to do this work. We have Electricians who could qualify to perform this work if the Carrier gets the machine necessary to do this operation.

This is just to clarify the record and to advise that we intend to progress this claim in accordance with the Railway Labor Act as amended.

Very truly yours,

/s/ Albert D'Ottavio
Albert D'Ottavio
General Chairman
Local 757, I. B. E. W."

This was the final handling on the property. The Carrier then in their submission to the Board went into great detail about their shop not having special equipment in comparison to other Carriers. This was never discussed on the property. They also went into great detail about the skill of their employes compared with other Carrier's again, this is a matter that was not discussed on the property. They also alleged the practice of the motors being repaired by outside concerns for twenty-five years, which was not discussed on the property. They also alleged that the Employes did not perform heavy repair this again was not handled on the property. Due to this the employes answered these allegations in their rebuttal statement as this was the first time they knew that the Carrier was taking these positions. The Referee in his findings accepted this from the Carrier but he declined to accept the rebuttal statement of the employes. His findings read in part as follows:

"It is, of course, the responsibility of the Organization to disprove the Carrier's contentions and statements. In this case, the Board

believes that the Organization failed to sustain the burden of proof. It is true that the Organization presented proof in its rebuttal statement, but it is the Board's disposition that such evidence must be raised and introduced on the property and included in the initial submission to the Board, otherwise it is inadmissible."

The Award is erroneous. It is based upon a determination of issues which were not raised until the Carrier presented same in its submission. That being the case such issues should either have been disregarded or the Organization's rebuttal statement should likewise have been considered in view of the first paragraph of the findings which state "The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds . . . "

The claim should have been sustained and we dissent.

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