Award No. 4787
Docket No. 4703
2-SOU-CM-'65

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, AFL-CIO (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when on April 6, 1963, Carrier contracted, instructed and authorized an employe of Floorcovering, Inc. to cover work benches in the air brake room at Chattanooga Shop, Chattanooga, Tennessee.

2. That the Carrier be ordered to discontinue these violations, pay Engine Carpenter G. C. Deal, Chattanooga, Tennessee, five (5) hours' pay for April 6, 1963.

EMPLOYES' STATEMENT OF FACTS: Engine Carpenter G. C. Deal, hereinafter referred to as claimant, was regularly employed by the Southern Railway System (The Cincinnati, New Orleans and Texas Pacific Railway Co.), hereinafter referred to as carrier, and was available to perform the work involved in connection with covering of work benches in the air brake room in the Chattanooga Shop, Chattanooga, Tennessee.

On April 6, 1963, an employe of Floorcovering, Inc., Chattanooga, Tennessee covered work benches in air brake room, Chattanooga Shop, Chattanooga, Tennessee, evidenced by correspondence.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The Agreement effective March 1, 1962 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that within the meaning and scope of Rule 149 of the controlling Agreement and memorandum of understanding on page 113, 114, 115 and 116, reading:

The U. S. District Court, Northern District of Illinois, Eastern Division, on March 25, 1953, in No. 52 C 320, dismissed the signalmen's complaint in connection with Award 4713. The courts held that the board by such award did not sustain the money claim. The award was declared null and void.

These awards involved issues identical in principle to that here presented. In each instance, the employes questioned the carrier's right to purchase parts and equipment on the open market. The board readily recognized the obvious fact that the purchase of parts and equipment is the sole function of management, that by no stretch of one's imagination can the purchase of parts or equipment constitute the farming out or contracting of work contracted to the employes and that that which was never covered by the agreement cannot be farmed or contracted out.

CONCLUSION

Carrier has shown conclusively that:

(a) The controlling agreement was not violated as alleged by the Brotherhood and does **not** support the claim and demand here made.

(b) Purchase by Carrier of ¼-inch thick masonite covers cut to order for the tops of two benches in the air brake room did **not** violate the agreement. The purchase of such parts on the open market is the sole function of management, and management has **not** negotiated away its right to do so.

(c) Claimant was **not** deprived of any work which he had a contract right to perform. He was **not** adversely affected and does **not** have a contract right to the unearned compensation demanded in his behalf.

(d) Prior Board awards have denied claims identical in principle.

Claim is without any basis whatever, and 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.

Although the work of trimming and installing the work bench covers involved time so slight and inconsequential that it must be disregarded for compensatory payment under the **de minimis** rule (Award No. 4361), it was

performed in the Carrier's shops at its order and came within the Employes' classification of work Rule 149. It thus violated the Agreement.

The record suggests that this claim might have been adjusted on the property if the manager of Carrier's shop had not concluded that the work did not belong to the carmen and declined to discuss the matter with the Local Committee.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1965.

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