

Award No. 5034

Docket No. 4926

2-NYC-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

THE NEW YORK CENTRAL RAILROAD
(Eastern District)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier arbitrarily contracted to an outside concern work properly recognized as electrician's work. The work involved, is the work of the electrician's employed in the Maintenance of Facilities Road Gang of the Mechanical Department.

2. That the carrier unjustly and improperly deprived the claimants of their work.

3. That accordingly, the carrier compensate at the time and one-half rate the following claimants for all time involved:

I. C. Scott
J. J. Anastas
R. Hitchens
S. Machan
S. Zacharek
D. Curtin
Neil Santorelli

EMPLOYEES STATEMENT OF FACTS: 1. The following letters were received by the general chairman from Mr. K. E. Dunn, Engineer, Maintenance of Way:

"Mr. E. J. LeClair, General Chairman,
Electrical Workers

July 13, 1962

Dear Mr. LeClair:

The railroad is developing a crash program to construct and remodel building facilities for a System Caboose Pool Program. The

of it could be performed by the employees of the Carrier. See Awards 3206, 4476, 4954 and 5304".

In Third Division Award 6112, Referee Messmore, it was held the same as the foregoing quotation from Award 5563.

In conclusion, carrier submits that—

1. The electrical work was an integral part of and incidental to the parcel of the new building constructed at DeWitt Yard, East Syracuse, New York, therefore making it impractical to split up the work between the contractor and carrier's employees.

2. The Claimants were regularly employed full-time and did not suffer any monetary loss during the time the Duke Electrical Company performed work on the new building.

Carrier submits that the employees' claim is without merit and respectfully requests this board to deny it 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Carrier used an outside contractor to construct and remodel building facilities for its System Caboose Pool Program. It is Petitioner's complaint that Carrier contracted out the electrical work involved in the program in violation of an agreement.

It is well established, as Awards 2186, 4091 and many others point out, that management is not obligated to subdivide work to retain part for its employees where the project as a whole is of such a nature as to warrant contracting it to outside firms. Here the electrical work was relatively small in comparison to the entire project that was contracted out and we would be disposed to find for Carrier on the basis of the awards cited above if no additional circumstances were present in this case.

The difficulty with Carrier's position is its Memorandum of Agreement of September 15, 1960, with the Electrical Workers. In that Agreement, Carrier expressly committed itself to continue the practice "of notifying the Electrical Workers General Chairman and getting his concurrence before projects in the aforementioned Electrical Workers gangs jurisdiction are contracted to outside concerns." Mere notification does not satisfy that commitment. There must be something more; specifically, concurrence by the General Chairman. This requirement is definite and unequivocal and there is no basis in the rules or record for setting it aside. We are bound by the language used by the parties to express their agreement and must give that language its normal and undistorted significance, even when it is tempting to do otherwise.

Carrier properly notified the General Chairman of the project but contracted the work and had it performed without "getting his concurrence." There is no evidence that the General Chairman's concurrence was arbitrarily withheld or could be dispensed with because of some extreme emergency. Under the circumstances, the violation is clear and we will sustain paragraphs 1 and 2 of the claim.

Carrier contends that paragraph 3, the compensation portion of the claim, must be nevertheless denied since all Claimants were working and fully occupied during the claim period and sustained no pecuniary loss or damage. While the awards are sharply divided on the point, it is our opinion that, in general, compensation should be awarded in cases of the present type not as a penalty but in accordance with the terms of a collective bargaining agreement that has been clearly breached. See, among many others, Awards 4489, 4322, 1802 and 1269. If the contrary were true, and agreement could be violated with impunity and might possess little practical meaning a factor that could well mitigate against the desired stability in labor-management relations.

The violation in the present case was not of a personal or merely technical nature that might justify the application of the nominal damage principle. It resulted in actual damage to the Petitioner measured in specific loss of hours of work. The claim accordingly will be sustained and compensation based on the number of hours at the straight time rate that were devoted to the electrical work in question. We are not satisfied that the overtime rate should be applied in this case.

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 31st day of January, 1967.