



Award No. 5938

Docket No. 5833

2-IC-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99,
RAILWAY EMPLOYEES' DEPARTMENT, A.F.L.-C.I.O.
(ELECTRICAL WORKERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier is violating the current agreement, beginning January 11, 1967, at Markham Locomotive Roundhouse, Chicago, Illinois, when it allowed Electro-Motive Division employes of the General Motor Corporation who are not subject to the current agreement, to perform electrical workers' work covered by the Scope of Agreement.
2. That accordingly, the Carrier be ordered to additionally compensate the Electrical Workers listed below at the pro rata rate for all time worked by the Electro-Motive Division employes performing this work, as this is a continuing claim:

L. W. Abel	J. L. Cepielik
N. C. Chylinski	J. V. DeSalvo
D. W. Dunmire	S. R. Falucskai
M. J. Foch	J. M. Holt
D. N. Johnson	G. W. Karrels
D. M. Koelling	A. C. Lopez
J. O. Munger	E. R. O'Donnell
J. C. Pearson	C. V. Sanfratello
W. H. Schafer	R. J. Schultz
W. H. Serabian	D. R. Slotwinski
J. W. Stavros	W. W. Stromquist
R. S. Swanson	C. F. Thorne
B. R. Tunnell	G. R. VanKat
A. A. Woods	

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter referred to as the carrier, maintains a modern, up-to-date maintenance and repair shop at Markham locomotive roundhouse in Chicago, Illinois, for its diesel locomotives.

The electrical workers listed above, hereinafter referred to as the claimants, are employed by the carrier, and are listed on the electrical workers' seniority roster at Markham locomotive roundhouse.

"The company violated the agreement when EMD employees modified the G.P.-40 locomotives; or that the Claimant suffered any wage loss as a result of EMD employees performing these modifications under warranty."

CONCLUSION: We have shown that no rule in the agreement supports the union's claims.

The "repairs" performed by the EMD employees were undertaken at the expense of the manufacturer under the terms of the warranty protecting these locomotives. Company electricians were fully employed during the claim period and suffered no wage loss as a result of Electro-Motive's warranty modifications to the G.P.-40 locomotives.

The union has not met the burden of proof in supporting its claims.

The company requests that upon the evidence of record and prior decisions of the division that the Board dismiss the union's claim because it involves issues properly before Special Board of Adjustment No. 570. If the claim is not dismissed it should be denied.

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.

Claimants are contending that Carrier violated Rules 32, 33, 117 and 124 of the Agreement when it permitted Electro-Motive Division Electrical wiring and resurface commutators on traction motors on Carrier's G-P 40 Diesel Locomotive as well as inspecting and testing electrical equipment, stoning commutators on auxiliary generators, applying wheel slip relays and changing shunts. Claimants contend that the Scope Rule of the Agreement specifically reserves said work to them to the exclusion of all others.

Carrier argues that the claim should be dismissed because Article VI, Section 1, of the September 25, 1964 Agreement provides for the establishment of a Special Board of Adjustment which shall have exclusive jurisdiction over disputes growing out of grievances concerning the interpretation and application of Article II, Subcontracting (Article VI, Section 8); that in two other disputes the Organization has recognized that the proper forum is Special Board of Adjustment No. 570 and not the Second Division of the National Railroad Adjustment Board.

The Organization, in its rebuttal to Carrier's submission, contends that at no time during the handling of this claim on the property did the Carrier ever question the procedural handling of this claim, and that thus being a new issue, it cannot be considered by this Board. With this contention we do not agree. This Board has consistently held that a question as to the Board's jurisdiction may be raised at any time in the proceedings. See Third Division Award 16786.

Article VI, of the September 25, 1964 Agreement, captioned "Resolution of Disputes", and in particular Sections 1 and 8, provides as follows:

“Section 1—Establishment of Shop Craft Special Board of Adjustment—
In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as ‘Board’, is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, and Article II, Subcontracting, of this agreement. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended.

“Section 8—Jurisdiction of Board—

The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection, and Article II, Subcontracting.”

In this dispute we have an issue involving subcontracting of work by Carrier to General Motors Corporation Electricians. Therefore, inasmuch as Article VI, Section 8, of the September 25, 1964 Agreement gives “exclusive” jurisdiction to a Shop Craft Special Board of Adjustment, in this instance Special Board of Adjustment No. 570, over disputes involving the interpretation or application of . . . Article II, Subcontracting, we must dismiss this claim without prejudice for want of jurisdiction.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May, 1970.