Award No. 1952
Docket No. 1814
2-CRI&P-BM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Boilermakers)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Boilermakers were improperly used to dismantle, and/or scrap two (2) Stationary Boilers at the Burr Oak Shops, Blue Island, Illinois on July 13, 14, 15 and 16, 1953.

2. That accordingly the Carrier be ordered to compensate Boilermakers Stanley Lukasik and Joe Stankus each in the amount of four (4) eight (8) hour days at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: On July 13, 1953 a concern or contractor identified as the "Speedway Wreckers," began the execution of a contract with this carrier management which called for the dismantling of two (2) stationary boilers and their appurtenances, etc., at their Burr Oak Shops, Blue Island, Illinois.

This dismantling and/or scrapping work necessitated the services of three (3) of that contractor's employes, who worked a total of four (4) eight (8) hour days each, starting July 13, 1953 and ending July 16, 1953, both dates inclusive.

Prior to this work being performed by contractors, the work on these boilers was performed by shop craft employes, each craft performing the work specifically covered by its respective craft classification of work rule.

Furloughed Boilermakers Stanley Lukasik and Joe Stankus (hereinafter referred to as the claimants) were available to perform this work if restored to service.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the dispute.

The agreement effective October 16, 1948, as subsequently amended, is controlling.

the work of the entire project was of the nature that did not lend itself to divisibility. For those reasons, we respectfully petition your Board to deny the claim.

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.

The parties to said dispute were given due notice of hearing thereon.

This case involves the contracting out to a private wrecking firm of certain work at the Power Plant, Burr Oak Shops, Blue Island, Illinois. The total contracted price was $2,350.00, plus value of scrap steel. Claimants, boilermakers, assert claim to only a portion of the entire job, that of dismantling and scrapping two stationary boilers which constituted about twenty percent of the total work.

Claim to the work was asserted by two furloughed boilermakers relying upon Rule 28 (a) concerning assignment of work; Rule 45, relating to scrapping of equipment, and Rule 64 outlining the work of boilermakers. We note that Rule 45 provides, in part, as follows:

> "Work of scrapping engines, boilers, tanks, and cars and other machinery will be done by mechanics or helpers of their respective crafts . . ."

and Rule 64 specifies that:

> "Boilermakers' work shall consist of . . . cutting apart, building or repairing boilers . . ."

The carrier asserts that the greatest obstacle to overcome was the dismantling of the two stacks which necessitated the use of a twenty-ton mounted crane. The carrier possessed what it contends was an inadequate and unsafe fifteen-ton crane. While there was contention to the contrary, we are inclined to go along with management's determination as to the equipment needs to safely and satisfactorily do the job. It is carrier's position that the crane equipment necessary on this project was of a type not generally useable on this property and that the project was of such nature that it did not lend itself to divisibility.

Looking at this case in the most favorable light to the carrier and considering the project as a whole, we find little to support carrier's action by contracting out this work. The work entailed in replacing the two boilers with a water treatment tank is described in the carrier's Ex Parte submission as follows:

> ". . . the removal of a window and window frame in the power plant, removing the concrete sill and several courses of brick below the window opening, dismantling and removing two brick encased water tube boilers, dismantling and removing two 90 foot steel smoke stacks, reducing five concrete foundations projecting above the power plant floor to floor level, and placing an 8 foot by 6 foot steel tank in the power plant."

With the exception of lowering the stacks and swinging the tank into the power plant, strictly crane work, we must credit carrier's own forces with the abilities and skills to perform the remaining work which is most usual and commonplace. We, of course, would not expect the carrier to

purchase a special crane solely to accomplish this comparatively small project, or to lease one from great distance. Considering the size and nature of this project, however, we feel that the burden is upon the carrier to justify the farm-out once challenged. Because the site of this work is in the heart of one of the country's most highly industrialized centers, we believe that the carrier was under obligation to show affirmatively that it had made diligent but unsuccessful attempts to lease this special equipment, or, to contract solely the crane work to a private contractor.

While an effort is made to minimize the extent of the work covered by this claim, the emphasis more properly lies upon the factor which the carrier admits was the greatest obstacle in completing the project, namely, the removal of the stacks as they were cut off with acetylene torches. Inability to handle this relatively small part of the whole project is no excuse for depriving its own forces of the balance of the work which by its nature was well within the scope of their abilities to perform.

The claimants were deprived of work properly theirs under Rules 45 and 64 of the Agreement to the extent claimed.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1955.

CARRIER MEMBERS' DISSENT TO AWARD 1952

This case arose when the carrier entered into a contract with the Speedway Wrecking Company to place a steel tank to be used for water treating in its power plant located at Burr Oak, Illinois. The work in placing the water treatment tank entailed the removal of a window and window frame in the power plant, removing the concrete sill and several courses of brick below the window opening, dismantling and removing two brick encased water tube boilers, dismantling and removing two 90 foot steel smoke stacks, reducing five concrete foundations projecting above the power plant floor to floor level, and placing an 8 foot by 6 foot steel tank in the power plant. The cost of the project was $2,350 **plus the value of the scrap steel.** Transactions of this kind are not violative of nor prohibited by the working agreement involved. As a result of this contract, the boilers and stacks became the property of the contractor and not the railroad. When the contractor became the owner of the equipment to be removed, it cannot be said that the railroad employes had any contractual right to perform the work complained of.

It is very significant that no claim was made by the boilermakers for the construction or the placing of the steel water treatment tank, although tank work is included in the classification of work rule to the same extent that the removing and cutting apart of boilers, which is so heavily relied upon by the majority in an effort to find a reason for sustaining the claim. The majority had to dig very deeply into the realm of fantastics for finding a reason for sustaining a claim of this kind. Note the following from the findings:

> "With the exception of lowering the stacks and swinging the tank into the power plant, strictly crane work, we must credit carrier's own forces with the abilities and skills to perform the remaining work which is most usual and commonplace. We, of course, would not expect the carrier to purchase a special crane solely to accomplish this comparatively small project, or to lease one from

great distance. Considering the size and nature of this project, however, we feel that the burden is upon the carrier to justify the farm-out once challenged. Because the site of this work is in the heart of one of the country's most highly industrialized centers, we believe that the carrier was under obligation to show affirmatively that it had made diligent but unsuccessful attempts to lease this special equipment, or, to contract solely the crane work to a private contractor."

It is said the carrier must determine if a specific project is being performed in the heart of the "country's most highly industrialized centers . . ." If any logic can be accredited to this quoted statement it must follow that if a specific project is in an agricultural territory where presumably no such equipment would be available, then the carrier would be free to contract the work.

There is no basis for the making of the above quoted statement in the applicable agreement, and such illogical thinking expressed in the findings of the majority in this case can only result in irreparable harm being done to the principles upon which the Railway Labor Act was founded, i. e., the elimination of causes for dispute and the final adjudication of disputes which arise.

This award is certainly a misapplication of rules of agreements, and we think the majority erred in the award.

J. A. Anderson
D. H. Hicks
R. P. Johnson
T. F. Purcell
M. E. Somerlott