Award No. 1990
Docket No. 1865
2-GM&O-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GULF, MOBILE AND OHIO RAILROAD COMPANY, (Eastern and Western Divisions)

DISPUTE: CLAIM OF EMPLOYES: 1. That the assembling, fitting up, reaming, riveting, welding of side sills, side sheets, stakes, top rails, etc., into complete finished sides of 32,000 series hopper cars in rebuilding of cars has long been recognized as work properly performed by Carmen, their Apprentices and Helpers under the terms of the current agreement.

2. That the contracting out of the aforesaid work or diverting same to other than Carmen, their Apprentices and Helpers, is not authorized by the current agreement.

3. That the Carrier be ordered to restore the aforesaid work to Carmen, their Apprentices and Helpers, and compensate furloughed employes, consisting of 4 Carmen, 2 Carmen Helpers and 1 Apprentice, who would have been used if work was properly performed on the property designated by the Organization when claim is sustained for all time lost from January 2, 1954 to May 31, 1954, inclusive.

EMPLOYES' STATEMENT OF FACTS: At Bloomington, Illinois the carrier maintains a freight shop for heavy repairs. In 1953, the carrier started a program to give their 32,000 series hopper cars a major overhauling and enough material was delivered to the freight shop to repair around 120 of the cars.

Four carmen, two carmen helpers and one apprentice were assigned to assemble, fit up, ream and rivet the side sheets, stakes, top rails and other parts into completely finished sides which later were applied to the cars by other carmen. When these 120 cars were completed, the men were assigned to repairing other cars until the material for the remaining hopper cars awaiting repairs was delivered to the freight shop. The claimants assembled five (5) sides, or 2½ cars each eight (8) hour day. The carrier made large reductions in force of carmen, carmen helpers and apprentices on December 31, 1953, and January 29, 1954.

it never had been under the Agreement. That which was never within the scope of an agreement cannot be farmed out.

This construction of the rule is consistent with past practice on this Carrier. The record discloses a number of instances where factory equipped instrument cases have been purchased without complaint on the part of the Organization. It is a clear indication that the Organization itself did not construe the Agreement to include the assembling and wiring of instrument cases by a manufacturer as the work of signalmen. As we have previously stated:

> 'The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made.' Award 2436.

. . . The contentions advanced by the Organization amount to an encroachment upon the prerogatives of management in one of its most important functions. Management should not be limited in its managerial prerogatives by placing a strained construction upon a rule that was never mutually intended by the parties. Such limitations upon the primary functions of management can be obtained only by negotiation, a function in which this Board can take no part." (Emphasis supplied.)

Carrier respectfully re-states its position as follows:

(1) At the time when its current agreement with its carmen was made, it had the unrestricted right to purchase material by item or in quantity, with or without warranties, by stock items or by having it manufactured to order, and either wholly or partially assembled,—and that right has never been abridged.

(2) This described right is a managerial prerogative and a primary function of management, which, not only has never been abridged, but also has been exercised from time to time without question throughout the long life of the current and preceding agreements.

(3) Its carmen have no contractual right to perform work on purchased material or equipment until such material or equipment has been delivered on its property, and then their rights apply only to work thereon which is provided by their working agreement.

(4) In the instant case, the work which the manufacturer of the car sides performed in his plant before the finished product was delivered to the carrier, was work to which the carrier's carmen were not and never were entitled by agreement to perform.

(5) A self-evident truth is: that which was never a right of carmen under the provisions of their working agreement could not improperly be subject to "contracting out" or "diverting same to other than Carmen".

At this late day in the life of the current agreement, the organization apparently is undertaking to gain by a hoped-for favorable decision by this honorable Board in this case, what it has never been able to gain through negotiation.

The contentions of the Organization are wholly without merit, and the claims should be denied; and this carrier prays that your honorable Board so decide.

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.

The record indicates that the contract between the carrier and the employes has not been violated. The contract does not abridge the carrier's right to make purchases in the manner in which was done here.

The work of assembling, when the fabricated parts were purchased and delivered unassembled, was clearly the work of these employes. In other words, the work is properly theirs if such exists in connection with carrier's equipment.

Before the time the fabricated parts were assembled the purchase order requirements had not been met with fully and the sides, under those conditions, had not yet become the property of the carrier.

If the carrier had purchased the fabricated parts from the manufacturer and had then employed another outside contractor to assemble the parts prior to delivery to the carrier's shops, the results would be different.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1955.