Award No. 1998
Docket No. 1830
2-CB&Q-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT A. F. of L. (Electrical Workers)

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement other than CB&Q Electricians were improperly used to repair 17 half horse-power motors for air-conditioning on cars Venus, Vesta, Minorca, Psyche, Ceres and Juno, during the period of December 1952 to March 2, 1953.

2. That accordingly the Carrier be ordered to:

(a) Assign employes of the Electrical Workers Craft to perform the aforesaid work covered in their scope rules of the current agreement;

(b) Compensate Electricians at the 14th Street Coach Yard, Chicago, Illinois, to be designated later if this case is decided in favor of the employes who were available on their rest days, off the over-time Board in the amount equal to that which would have been involved if work was performed by Electricians at the applicable overtime rate for the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: On this carrier's property it is the practice each fall to remove all fans, pumps and other motors on air-conditioned cars and during the period they are not needed for air-conditioning, to overhaul or repair such equipment to make it ready for re-installing upon the cars before needed for the next year's air-conditioning season.

During the period December 1952, to March 2, 1953, the carrier contracted to Lee Foss Electric Motor Service, Oak Park, Illinois, the work of overhauling 17-½ H. P. motors, Series A-1501. These motors were removed from cars Venus, Vesta, Minorca, Psyche, Ceres and Juno, and after being overhauled, were re-installed in these cars.

The aforesaid work was performed, prior to the instant case, at the 14th Street Chicago, Illinois, shop or in the electric shop at Aurora, Illinois.

had been removed from the pump and sent to an outside contractor for repairs. However, the organization took no exceptions to the fact that it was repaired off the property, but only argued that shop rather than system electricians should have been given the work. Certainly if contracting out such work was a violation of their contract, the organization would have made that a point in Docket 1761. Its failure to do so illustrates how well accepted such practices have become throughout the many years they have been in force.

SUMMARY

For the many reasons which will not be repeated in this summary, the carrier is confident the Board will find this claim so incorrect as to matters of form and procedure, that it will be dismissed. Petitioning organization has a responsibility to progress claims in an orderly, businesslike manner, which it has completely failed to do in this instance.

If the merits of this case are reached, the claim must be denied because the work complained of was not within the Maintenance of Equipment Department, but was completely outside the scope of the agreement between the parties. The practice on the property for many years fully supports the carrier's contention in this respect.

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 the dispute were given due notice of hearing thereon.

The work in dispute, consisting of overhauling and repairing seventeen one-half horse power fan motors taken from the air conditioning systems of certain name cars, was contracted to Foss Electric Motor Service, Oak Park, Illinois, by carrier's stores department. The removal was performed by shop electricians at the 14th Street Coach Yard after which they were turned over to the stores department. In the spring requisitions were made upon the stores department and the work of reinstalling was done by carrier's shop electricians. The work in question was performed during the interval.

The organization claims that the repair work belonged to carrier's electricians in the Maintenance of Equipment Department, at the 14th Street Coach Yard.

Brief findings in respect to certain technical defenses urged in carrier's motion to dismiss, follow. Carrier asserts that "the claim was initially filed beyond the time limit agreed upon by the parties". **Occurrence** within the meaning of cited Rule 30(a), as here applied, must be construed as the date of discovery. Knowledge of the offense is a condition precedent to the tolling of the period, witnesseth the language of the rule,—"An employe * * * who **believes** * * *". (Emphasis supplied)

Next, that "the agreement contemplates claims only on behalf of specifically named, individual claimants, none of which are contained herein." Group or several claims have too long been asserted, defended against and awards rendered thereon to at this late date urge that claims must be individually prosecuted. Here the letter of the local chairman dated March 6, 1953, clearly defines and sufficiently advises the carrier of the class of employes to be considered as claimants and the period of violation involved. The individuals' names can be gleaned without difficulty from the carrier's records when such becomes pertinent. This is not the evaluation of records

to develop claims against itself. Neither is there such indefiniteness as was present in the dismissal awards relied upon by the carrier.

Carrier next contends that "the unnamed electricians designated by the organization would not have performed this work had it been done on the property". The point made is that while 14th Street Coach Yard electricians took out and replaced the motors and for a number of years on alternate years, had dismantled the motors for cleaning and making minor repairs, carrier would have had this particular work done at either Aurora or Havelock shops if it had done the work with its own forces. We are not speculating where carrier might have had the work done, nor are we deciding in this submission rights as between the carrier's electricians. The fact is that the work was performed by a private contractor and the propriety in so doing, is in question. The organization in the first instance, and, failing, the Board will protect the carrier against dual claims for the same work.

Next asserted is the proposition that "the amount claimed, as well as the claim itself, is so indefinite that the Board cannot make an intelligible decision in favor of the employes". This question was subsequently resolved by the parties the carrier stipulating that three motors per man per day is a fair estimate of the time involved to compute penalty payments. Hence 5⅔ man days are involved.

Carrier's Motion to Dismiss is denied.

Arguing to the merits, carrier's position is that the Agreement with the Brotherhood specifies that it applies only to the Maintenance of Equipment Department; that the work involved Stores Department matter beyond the scope of the agreement. A list of equipment sent off property for repairs, by Stores Department in the past, is furnished. Carrier then sets forth a recital in the Agreement reading:

> "(1) All agreements, rulings and/or practices now in effect, which are not clearly and specifically abrogated by changed rules of the new agreement, shall remain in full force and effect until changed by the parties in accordance with the Railroad Labor Act as Amended."

It argues that the practice of sending out the small parts and material, appearing on said list, to outside firms for repairs was perpetuated by the above and has never been abrogated by rule change.

As to the motors in question, we believe that the record before us fails to substantiate carrier's argument based on practice existing at the time of the Agreement. Carrier concedes that the Maintenance of Equipment electricians had removed and replaced these particular motors; that, at least bi-annually, Maintenance of Equipment electricians had cleaned and made minor repairs to this equipment. Numerous employes certify to an exchange of compressor and condensor motor overhaul work with the Aurora Shop since 1936. The record would seem to reflect that this was the first occasion that this particular work had been farmed out to a private contractor. Under circumstances here presented, we cannot find that the Preamble to the Agreement, above quoted, supports carrier's position.

We cannot subscribe to the proposition that work, otherwise belonging to Maintenance of Equipment Department, can be removed from their jurisdiction by the unilateral action of carrier in routing the work through the Stores Department. Such an expedient, if upheld, could strip the negotiated agreement of all vitality and meaning.

We find that the Agreement was violated.

The measure of the value of work lost is the pro rata rate. See Award 1995 and citations there appearing.

AWARD

Claim sustained for five and two-thirds working days at applicable pro rata rates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1955.

DISSENT OF CARRIER MEMBERS TO AWARD 1998, DOCKET 1830

In sustaining this claim the majority has ignored the evidence of record to arrive at several interpretations of the agreement between the parties which are extremely far-fetched and which may prove disastrous in the future.

The respondent Carrier submitted four separate procedural defenses in this dispute, any one of which should have been sufficient to prohibit this Board from reaching a decision which would sustain this claim. The denial of Carrier's motion to dismiss by the majority in this award emasculates many of the procedural rules of the agreement between the parties dealing with the manner in which claims and grievances will be handled.

In response to the Carrier's assertion that the claim was initially filed more than fifteen (15) days after the motors in question were shipped off the property, the majority has held that "Rule 30(a) as here applied must be construed as the date of discovery. Knowledge of the offense is a condition precedent to the tolling of the period, witnesseth the language of the rule, 'an employe * * * who believes * * *'." This interpretation to the rule can only mean that the fifteen (15) day period specified therein does not begin to run, (at least in cases of this nature), until after the employes discover the facts. This gives carte blanche authority to the local chairman to submit claims involving contracting out work any time he wishes. Were the Carrier to interpose the defense that the fifteen (15) day period had elapsed, the employes could overrule that objection with the statement that this was the first they learned of it. The Carrier is placed in the precarious position of either waiving the fifteen (15) day limitation, or advising the employes in advance whenever any work is to be contracted out. Thus the majority has under the guise of interpretation, taken a rule specifically designed to minimize claims, and created a rule which can only lead to additional claims. The decision on this point will certainly tempt the employes to seek application of this interpretation to claims of an entirely different nature than the one here before the Board.

The Carrier's second defense overruled by the majority, was that there were no specifically named individual claimants contained in the claim as presented to this Board. In denying this portion of the motion to dismiss it is asserted, "Group or several claims have too long been asserted, defended against and awards rendered thereon to at this late date urge that claims must be individually prosecuted." There is nothing in this record containing a position of the Carrier that these claims should have been individually prosecuted, i.e., the claim for each individual handled under a separate file and prosecuted to this Board many times instead of on behalf of the group. However, the Carrier did assert, and cited a long line of awards in support of that assertion, that group claims must contain the names of the individuals who stand to collect the monetary sum which is alleged to be due them. Two of these awards (First Division Award 13058 and Third Division Award 6708) were decided by the same referee, and held that where the names were not furnished at the time the claim was presented, no payment need be made. We are unable to explain why the same referee in sitting with the First and Third Divisions reaches findings that claims on the behalf of unnamed parties may be "ignored because of indefiniteness," yet when he sits with the Second Di-

vision, holds that "The individuals' names can be gleaned without difficulty from Carrier's record when such becomes pertinent." These findings are particularly bitter to the taste when the rule to be interpreted on this particular property specified that **"an employe** subject to this agreement who believes he has been unjustly dealt with or that any of the provisions of this agreement have been violated * * *." (Emphasis added). The undersigned members of this Board must violently dissent from any interpretation of that language which would construe this rule to mean that the parties contemplated they would permit claims to be filed and progressed on behalf of an unnamed group of employes.

Perhaps the Carrier's strongest point among these procedural defenses was that the organization had erred in naming the group of electricians at the 14th Street Coach Yard as those entitled to the monetary sum claimed. This objection was blithely dismissed with the finding that, "We are not speculating where carrier might have had the work done, nor are we deciding in this submission rights as between the carrier's electricians. The fact is that the work was performed by a private contractor and the propriety in so doing is in question." In other words, the majority holds that the organization can select a favored group of employes within its jurisdiction, and progress a claim to this Board on their behalf, and collect for them through the medium of a sustaining award, even though the evidence proves without question that there was no possibility that the electricians at the 14th Street Coach Yard could possibly have ever done this work. The record contained evidence that there are no facilities at the 14th Street Coach Yard for the complete overhaul of small motors, including varnishing, baking, rewinding, etc. The Foss Motor Service performed exactly that work. The majority ignored the evidence in this respect by holding that the Carrier should compensate the 14th Street Coach Yard electricians in order to satisfy this erroneous award. It affords very little consolation to the Carrier to know that "the Board will protect the Carrier against dual claims for the same work." This is particularly true in view of the fact that the Carrier is already required to make dual payments for this work, once to the outside contractor, and once to the 14th Street Coach Yard electricians under this award, who would never have had an opportunity to perform the work. Certainly a labor organization has an obligation to progress claims on behalf of claimants who may reasonably expect to do the work which is contracted out.

The Carrier's final objection was that the claim was made for an indefinite amount. At the hearing before the referee it was stipulated that three motors per man per day was a fair estimate of the time involved and that five and two-thirds man days would satisfy the entire claim. This however does not remove the basic objection that any claimant before this Board is obligated to present a claim for a specific amount of damages if he expects to be awarded damages. If the amount cannot be stated exactly, at least sufficient facts should be presented in the employes' original submission upon which a computation of damages can be based. Here neither of these basic elements of a claim for damages was present. Only through the efforts of the Carrier was an agreement reached between the parties as to how much time was involved in this dispute, and those efforts were expended while this case was being progressed before this Board. The undersigned cannot condone such practices as a method of arriving at a computation of damages in disputes which are presented to us.

The gist of Carrier's defense on the merits was that the agreement between the parties was limited by its scope to material in the Maintenance of Equipment Department, and that these motors were Stores Department material beyond the scope of the agreement. This position was overruled with the finding that:

> "We cannot susbcribe to the proposition that work, otherwise belonging to Maintenance of Equipment Department, can be removed from their jurisdiction by the unilateral action of carrier in routing the work through the Stores Department. Such an expedient, if upheld, could strip the negotiated agreement of all vitality and meaning."

In brief, the majority holds that the parties have agreed to a provision which could do the employes an immeasurable amount of damage. However, this provision has been jointly interpreted for many years, as shown by the evidence of record, to permit the contracting out of repair and overhaul of any small pieces of equipment similar to the motors in question. The findings that "The record would seem to reflect that this was the first occasion that this particular work had been farmed out to a private contractor," is utterly irrelevant to the issue. If the specific wording of the agreement permits sending out equipment similar to these motors, it permits the contracting out of the repair and overhaul of these particular motors. If the contract is deficient in this respect, the only remedy is for the employes to serve a notice under Section 6 of the Railway Labor Act to have that provision removed from their contract, not to have it interpreted by this Board in such a manner that would deprive it of all meaning entirely. Our duty is not to write new and better agreements for the employes. The jurisdiction of the Second Division under the Railway Labor Act is merely to interpret the existing agreements between the parties. Contract-making is a dangerous field for this Board to engage in, and the decision on the merits of this case certainly is an invasion of the prerogative reserved under the Railway Labor Act to the parties who make the agreements.

As we view it, this award is clearly erroneous. It is not an expensive award, and probably can be satisfied by the expenditure of less than a hundred dollars. However, the damage to the contract between the parties, as outlined above, greatly outweighs the monetary damages involved herein. The annals of the Second Division do not contain an award where one collective bargaining agreement has been misinterpreted in so many respects, and for these reasons we must dissent.

J. A. Anderson
D. H. Hicks

E. H. Fitcher
M. E. Somerlott
R. P. Johnson