Award No. 2186
Docket No. 1951
2-C&WC-SM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 60, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Sheet Metal Workers)

CHARLESTON AND WESTERN CAROLINA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier at Augusta, Georgia improperly contracted out the following work to Former Sheet Metal Worker Owen and men in his employ.

a) Pipe work in connection with installing fuel oil station and facilities to service Diesel locomotives.

b) Pipe work in sand tower, which facility is used to supply sand to Diesel locomotives.

c) Pipe work in connection with installing steam, air, water and oil lines in Diesel shop placed in operation at Augusta, Georgia to take the place of the roundhouse for Diesel locomotive maintenance.

d) Pipe work in connection with installing hot water equipment in washrooms of Diesel shop.

e) Pipe work in connection with installing steam generator and air compressor in Diesel Shop to supply power necessary in the maintenance of Diesel locomotives.

2. That accordingly the Carrier be ordered to compensate Sheet Metal Workers and Sheet Metal Worker Helpers in the amount of $17,939.78, which is the amount paid former Sheet Metal Worker Owens and his men.

EMPLOYES' STATEMENT OF FACTS: At Augusta, Georgia, the Charleston & Western Carolina Railway Company (hereinafter referred to as the carrier) maintained a roundhouse to service and repair steam engines.

claim, it is indicative of an unusual lack of faith in the merits which carrier believes amply justified by the circumstances. To put it more succinctly, the employe representative knew the shops were being constructed under contract, stood by until they were completed and then filed claim demanding that the sheet metal workers be paid for work which they were not, under the agreement, entitled to perform and which they had not performed.

The 1952 claim of Local Chairman Mitchell was declined by Superintendent Motive Power Jones and thereafter it was progressed through the usual channels to the undersigned where, during discussion in conference December 30, 1952, the general chairman was advised it was declined. This declination was confirmed in letter dated January 2, 1953. The matter thereafter, insofar as carrier knows, lay dormant until March 14, 1955, at which time the general chairman wrote the undersigned that he had additional information regarding the claim and desired further conference. This request was granted and conference held April 11, 1955. In this conference, the organization attempted to make capital of the fact that a small amount of the pipe work in question was fabricated in carrier's old shop by pipefitters for use by Contractor Owens in constructing his part of the new diesel locomotive shop. Carrier concedes the work alleged was fabricated in its old shops and considers that as the logical thing to have done. Carrier has in the past fabricated certain materials for outside concerns such as Contractor Owens and did not receive complaint that such action on its part was a violation of the agreement. On the contrary, such outside jobs have provided additional work for the shop employes.

Inasmuch as the employe representatives presented no evidence which indicated violation of the current agreement, the claim was again declined and formal declination was made to the general chairman in letter dated April 13, 1955.

It is carrier's position that until its shop craft employes were informed to report for work and perform their regular duties of repairing diesel electric locomotives in the new diesel shop on January 21, 1952, the facilities were not a part of the Maintenance of Equipment Department and work performed on the shop facilities did not come under the classification of work rules of the shop crafts agreement.

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 is a claim by sheet metal workers and sheet metal worker helpers for work which the carrier farmed out to a contractor in the construction of a new Diesel locomotive shop facility at Augusta, Georgia. The claim is for the amount of money paid to the contractor, amounting to $17,939.78, for performing the sheet metal work.

The record shows that for many years this carrier had leased terminal properties of the Central of Georgia Railway Company at Augusta which included roundhouse, turntable, storehouses, shops, water tank, coal chute and various shop tracks. These facilities, including a full complement of heavy machinery and small tools, were used for repairing its steam locomotives. Under the terms of the lease agreement, carrier also serviced and repaired locomotives for the Central of Georgia Railway Company and the Atlantic Coast Line Railroad Company.

After Diesel locomotives superseded steam locomotives on carrier's road, carrier determined to construct new locomotive facilities on its own property. In July 1950, construction was commenced. It was completed on January 18, 1952. All locomotive operations were moved to the new facility on January 21, 1952. The magnitude of the construction is evidenced by the fact that the following were included in the construction work: A 506,000 gallon fuel storage tank and locomotive fueling facilities, a Diesel locomotive repair shop and necessary shop equipment, a lubricating oil storage tank and pumping facilities, Diesel sand tower and facilities, steam generator building, crew washroom building and a shop washroom building. The carrier asserts that the magnitude of the work, the want of necessary skills and ability of carrier's forces, and the novel and unusual character of the work, warranted the carrier in contracting for its performance. In contracting the work, carrier asserts that it could not get one general contractor to do the complete job and it became necessary to make contracts with several contractors, including the contract with E. D. Owens for the sheet metal work involved in the present claim. Carrier claims also that the construction was no part of carrier's operations until it was placed in use on January 21, 1952. The organization, on the other hand, contends that the sheet metal work contracted to Owens was within the agreement of that craft, that the sheet metal workers were damaged when the work was farmed out, and that they should be made whole because of the agreement violation.

No precise rule appears to have been formulated by which it can be determined when a carrier may properly contract work to independent contractors. It is the general rule that a carrier may not farm out work which can be performed by its employes. This rule in turn contemplates that carrier's employes are entitled by contractual right to perform all work of the craft or class which the collective agreement contemplates shall be performed by them. Some of the exceptions to the general rule are set forth in awards of this Board. Work may be contracted out when it appears that it requires equipment that the carrier does not possess or skilled workmen not in carrier's employe. Award 2338, Third Division. In Award 3206, Third Division, it was held that the driving of tunnels in a rock quarry to obtain large sized rock for riprapping purposes was so different and so dangerous when compared with the work usually performed by its employes that carrier could properly contract it out. In Awards 2465, 4712 and 5304, Third Division, it was held that new work of a specialized nature could properly be contracted to third persons. The fact that work is novel and unusual may in proper cases permit it to be farmed out. Awards 2465, 3206, Third Division. The magnitude of a project may afford a basis for the farming out of work, particularly where unusual skills and equipment are required. Award 5151, Third Division. The question is one of fact in a determination of which the carrier is permitted to exercise reasonable judgment. Awards 3206, 4776, 4954, Third Division. Arbitrary determinations of questions of fact will not justify the farming out of work. Award 1803, Second Division. In Award 5563, Third Division, a factual situation very similar to the one presently before us was before the Board. It was there held that carrier could properly contract the work. The reasoning of that award has particular application in the present dispute.

Under the previous holdings of this Board, the claim here made must be denied. The record shows that this is the first project of its kind undertaken by this carrier. The whole project was new construction of great magnitude involving the erection of buildings and special facilities for servicing and repairing of Diesel locomotives. The bulk of the work was novel and unusual. It was not work ordinarily performed by carrier's employes. That special machines and equipment were required cannot reasonably be disputed. We point out also that during this new construction, carrier's employes were carrying on their usual work in the leased facilities. While it is of evidentiary value, only as to the question of good faith, the fact remains that carrier's employes continued with their usual work and lost nothing during the construction of the new project. There is no evidence of bad faith or arbitrary action on the part of the carrier.

The organization contends, however, that the foregoing rules do not control the present claim for the reason that the carrier entered into a separate contract with Owens for the performance of work which the sheet metal workers could perform. In this respect, it is the opinion of the Board that the project should be treated as a whole in determining whether a proper basis existed for the contracting of the work. A carrier is not required to split up work and contract a part and retain a part for its employes to perform where the whole project is of such a nature as to warrant the carrier, in a reasonable exercise of its managerial judgment, to contract the work. Awards 4954, 5304, 5563, Third Division. The fact the carrier was obliged to contract with several persons instead of one cannot change the result. We think it may contract work piecemeal to various contractors where the whole is subject to being contracted by a single contract.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1956.