Award No. 2276
Docket No. 2070
2-IC-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, the Carrier improperly assigned the installation of electrical fixtures at its Burnside Diesel Shop, Chicago, Illinois, to an Electrical Contractor thereby damaging the employes of the Electrical Workers Craft in an approximate total of Five Hundred Seventy Six (576) hours of work and that accordingly the Carrier be ordered to discontinue such practice.

2. That the following regularly employed employes of the Carrier of the Electrical Workers' Craft be compensated at the applicable time and one-half rate for each man hour worked for this electrical workers' work which they were entitled to perform under the applicable rules of the current agreement.

1. V. A. Besse
2. E. Bracken
3. D. T. Cruse
4. H. D. Curtiss
5. F. Gianiani
6. P. F. Golden
7. J. Graziano
8. Floyd J. Klein
9. R. H. Little
10. G. F. Lockwood
11. W. S. McLaren
12. W. H. McManes
13. W. H. Moffat
14. G. R. Nordquist
15. M. J. Novicky
16. Jos. Parkert
17. L. J. Peck
18. Francis Perry
19. W. E. Ray
20. J. G. Reibel
21. Geo. H. Rogers
22. D. V. Smith
23. W. E. Taylor

EMPLOYES' STATEMENT OF FACTS: The above stated claim of employes was submitted to the National Railroad Adjustment Board, Second Division, by the employes under date of September 23, 1954, and the subject matter of that letter was:

> "Notification of intention to file ex parte submission involving Claim that Rules 33 and 117 have been violated by contracting out electrical work under the Illinois Central current agreement at the Burnside Shop, Chicago, Illinois."

change in the agreement pursuant with the provisions of the agreement and the Railway Labor Act was mutually recognized by the signatory parties.

The claims in behalf of employes who have no right to perform the work in question are not valid is evidenced by the following excerpt from Third Division Award 6949:

> "The claimant being regularly assigned in Group 1 of the Water Service Sub-Department, his seniority rights under Rule 5 (a) are confined to that group as long as his seniority permits him to hold a regular position in that group. His seniority can be exercised on a position in another group only in case of force reduction, displacement, voluntarily accepting an assignment of more than 30 days in a lower grade, or by bidding for bulletined vacancies on new positions under Rule 26. We necessarily conclude that Claimant had no seniority right to the work constituting the basis of the present claim. It is very doubtful, also, that Claimant was available to do the work. But the Organization says that we are not concerned with these matters if there was in fact an agreement violation and cites Awards 6019, 6136, 6158. We are in agreement with these awards which hold that one of a group entitled to perform the work may prosecute a claim even if there be others having a preference to it. The question here is whether or not one who has no right at all to perform the work may properly invoke the principle of these awards.
>
> We think this question requires a negative answer. A claimant who is not among a class of employes entitled to perform work has no basis for a claim. Clearly an employe making claim for a penalty for work lost must have a right to the work even though there may be employes senior to him who have a right prior to his. The awards holding that it is immaterial as to which employe makes the claim, implies that it is immaterial as between employes of the same class in the same seniority district. No reason exists for saying that one having no right whatever, contingent or otherwise, to perform work can process a claim for its loss."

Furthermore, the claim was not handled with proper appeal officers of the mechanical department as required by the provisions of Rule 37 and it was denied on this basis in letter dated November 25, 1952. That appeals must be handled properly and within a reasonable time is evidenced by the following excerpt from Third Division Award 7135:

> ". . . The Organization was fully advised of Carrier's refusal to pay the claim on November 11, 1949, and reiterated after conference on December 6, 1949. We think the Carrier had a right to assume that the matter was closed when an appeal was not taken within a reasonable time thereafter. A delay of almost five years is unreasonable. It is an unconscionable delay when it is considered that the claim was continuously growing larger while the Organization delayed in giving notice of an appeal to the Board. The unconscionable delay on the part of the Organization is such as to terminate the right to appeal. One may not sleep on his rights indefinitely and then avoid the effects of acquiescence, estoppel and laches. Awards 2576, 3002, 3778, 4277, 5190, 5949, 6228, 6229, 6494, 6650, 7000."

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 organization contends carrier violated the Scope Rule of its effective agreement with it covering electrical workers performing electrical work in its Maintenance of Equipment Department by improperly assigning the work of installing fixtures at carrier's Burnside Diesel Shop, Chicago, Illinois, to others not covered thereby. It is contended carrier contracted this work, consisting of approximately five hundred and seventy-six (576) hours, to a contractor. In view of that fact the organization asks that carrier be directed to discontinue this practice and that twenty-three (23) named employes of the carrier's electrical workers, who are on the roster of the Maintenance of Equipment Department Seniority District No. 3, Burnside Shop and covered by its agreement with the organization, be compensated to the extent of the work so contracted out to others. They ask for compensation at time and one-half the rate applicable thereto.

This claim has previously been presented to this Division in Docket 1771 on which our Award 1906 is based. The effect of that award was to remand the dispute to the property for conference between the parties, as contemplated by the Railway Labor Act, looking to a settlement thereof. Settlement was not arrived at so the matter is again here for our consideration.

Carrier contends the dispute was not handled on the property in a prompt and orderly manner as the Railway Labor Act contemplates it should have been and, because of that fact, claims the doctrines of laches and estoppel have application. It also contends it was not handled on the property in the manner Rule 37 of the parties' effective agreement provides it should have been. We think these contentions were decided adversely to carrier when, in our Award 1906, we remanded the claim to the property for conference pursuant to the Railway Labor Act.

The organization contends that the carrier failed to comply with the requirements of the Railway Labor Act, particularly Section 6 thereof as Rule 151 of their effective agreement provides should be done, when it attempted to change the supplemental understanding of July 1, 1940, negotiated under Rule 124 (a) of the parties' effective agreement, as it relates to seniority district No. 3 in its Burnside Shop in the Chicago Terminal. We think Award 1970 of this Division passed on that question and is controlling here. It holds contrary to the organization's contention.

Prior to the foregoing change in seniority district No. 3, Burnside Shops, it would appear that language describing electricians' work as inside and outside wiring at shops, buildings, yards, and on structures; and all conduit work in connection therewith, as it relates to the Burnside Shops, was covered by both the agreement covering electricians in its Maintenance of Equipment Department and in its Maintenance of Way and Structures Department. We think the change made by the carrier in seniority district No. 3 had the effect, insofar as the Burnside Diesel Shop is concerned, of dividing this work between these two groups of electricians as follows: that inside of the shop to electricians in the Maintenance of Equipment Department and that outside thereof to the eletcricians in the Maintenance of Way and Structures Department, the breaking or separation point being at the switching point where the lines enter the shop.

As stated by carrier in its submission, "It has always been the responsibility and the jurisdiction of the Maintenance of Way and Structures Department on the Chicago Terminal to install and maintain all electrical lines and appurtenances permanently anchored or fastened to buildings." and "* * * to install main services with high voltage or low voltage to the service switch or service breaker within the buildings." This is further evidenced by two letters, dated May 12, 1953 and June 9, 1953, from E. H. Hallmann to E. L.

Derington, general chairman of the International Brotherhood of Electrical Workers. And, as set forth in a statement signed by thirty-two (32) electricians employed at the Burnside Shops, electrical workers employed at Burnside Shops performed all maintenance, repair and installation work on all electrical fixtures and equipment in the Burnside Shops up to the time of the work herein involved.

The work here involved can be described as the installation of vapor lights on the pit side in the Burnside Diesel Shop. See Award 1906. The record shows it consisted of installing three circuit distribution panels together with seventy-five (75) mercury vapor lighting units and the necessary wiring to install them. It was a replacement job.

Carrier entered into a contract with and had the Berry Electric Company of Chicago, Illinois do the installing thereof. It used approximately five hundred and seventy-six (576) man hours to do the job. Since the work performed came within the scope of the parties' then effective agreement covering electricians in the Maintenance of Equipment Department carrier improperly contracted it out to others. The penalty for doing so is that the class of employes who lost the work be compensated for the amount thereof at the rate applicable thereto which, in this instance, would be at the regular rate of an electrician.

AWARD

Claim sustained but at the pro rata rate of an electrician.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October, 1956.