**Award No. 2377**
**Docket No. 2230**
**2-SOU-EW-'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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the Carrier has violated and continues to violate the terms of the current agreement by contracting out of electrical repairs on main and auxiliary generators, traction, fan and other motors and electrical parts of diesel-electric locomotives to persons other than Electrical Workers covered by the current agreement.

2. That accordingly the Carrier be ordered to have all the repairing, rebuilding of main and auxiliary generators, traction, fan and other motors and electrical parts of diesel-electric locomotives performed by its own forces in accordance with the terms of the current agreement.

**EMPLOYES' STATEMENT OF FACTS:** At Atlanta, Georgia, the carrier has established a shop for the repairing and rebuilding main and auxiliary generators, traction, fan and other motors and the parts thereof for its diesel-electric locomotives and is commonly referred to as the Atlanta Motor Shop. With the opening of this shop on full scale, the shops at Spencer, North Carolina, Somerset, Kentucky, Knoxville, Tennessee, Birmingham, Alabama, were closed that had been formerly used to rewind and repair electric generators and motors and their controls. It being generally understood that the work which had heretofore been performed at the shops where the facilities had been removed would be done at the Atlanta Motor Shop.

In 1952, complaint was made and progressed to the effect that the company was sending motor and generator frames to the Electro-Motive Division of General Motors at Jacksonville, Florida, and some work to the General Electric Company. Inasmuch as it was thought that all of the frames to be converted to another type had been finished the matter was not further handled until the first part of 1954, at which time the company in addition to sending out frames to be converted had also included the auxiliary generators, fan and other motors.

involved, and the employes and the organization representing them have recognized this.

(4) The principles of awards of the National Railroad Adjustment Board sustain carrier in contending that the scope rule of the electrical workers' agreement is not being violated when carrier sends electrical assemblies to the manufacturer on a repair and return basis, or unit exchange basis, or when electrical and other equipment is returned to the manufacturer for replacement or repairs under the manufacturer's warranty.

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Thus, it is clear that, if this Division does not agree with the carrier that the bar is absolute (see Item I, above), the claim is without merit and should be denied.

**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.

It is contended by the organization that the carrier is contracting out electrical repairs on main and auxiliary generators, traction and fan motors and electrical parts of diesel-electric locomotives in violation of Rule 136, the electricians' classification of work rule, which provides in part:

> "Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all generators, * * * motors, and controls, * * * motor generators, * * * winding armatures, * * * steam and electric locomotives, passenger train and motor cars, * * * and all other work recognized as electricians' work."

The foregoing rule came into existence in 1921. The carrier first used diesel-electric locomotives in 1939. Following a dispute concerning the use of factory maintainers riding the diesels to see that they were properly operated, the carrier informed the organization that maintenance work on diesel-electric locomotives would be performed at terminals by mechanics of the several crafts in the same manner as with other locomotive power and equipment. The evidence shows that from the beginning of the use of diesels, that motors and generators have been sent to the Electric Motors Division of General Motors under warranty agreements made at the time of purchase and on a unit exchange basis. The basis of the claim appears to be wholly based on the theory that the sending of traction motors to E M D on a unit exchange basis deprives the electrical workers of work to which they are entitled under their classification of work rule.

In 1944, carrier remodeled its shops at Atlanta, Georgia, in order to more adequately service diesel-electric locomotives. After it was placed in operation, carrier closed its shops at four other points and caused the maintenance work on diesel-electric locomotives to be performed at Atlanta. In 1952, claims were filed by the employes based on alleged violations of the electricians classification of work rule. In 1953, carrier's personnel officer advised employes' representatives that violations had been corrected and that he considered the disputed issues as being moot. Nothing further was done until later in 1953 when the issues involved in the present dispute were again presented to the carrier.

Carrier now asserts that the appeal to this Board is out of time for the reason that the dispute was not brought to the Board within the time specified by the Agreement of August 21, 1954, to wit, January 1, 1956. The record shows that notice of intent to appeal was filed with the Board on December 28, 1955. The notice of intent gave the Board jurisdiction of the dispute and lodged the appeal with it in accordance with the 1954 agreement. Carrier further contends that as the 1952 dispute was not progressed to the Board the employes have accepted carrier's decision and that their acquiescence therein bars a further hearing of the claim by this Board. We point out that any acquiescence on the part of the employes was based on carrier's personnel officer's statement that the dispute was settled and the question moot. There appears to have been a misunderstanding about the matter and the nature of any settlement that was made. When carrier continued to send diesel-electric traction motors to E M D on the unit exchange basis, a new claim was made alleging such exchange to be in violation of the electricians' classification of work rule. Such a situation is not one where the employes can be said to have acquiesced in the carrier's decision. Such acquiescence was based on a mistake of fact that is clearly set forth in the record. Consequently, we hold against the carrier's contention that this dispute was settled, accepted or acquiesced in by the employes.

It was shown at the referee hearing that carrier purchases new traction motors for diesel-electric locomotives with a warranty that they will operate for one year or for 100,000 miles without inherent defects. The return of traction motors to the purchaser for repairs under the warranty is concededly not a violation of the electricians' agreement. The record shows, however, that when the diesel-electric traction motors become worn and antiquated, and cannot be made fit for service by ordinary maintenance of repair, the carrier sends them to the manufacturer on the unit exchange basis. In return the carrier receives a rebuilt, modernized traction motor with the same warranty as a new traction motor. The employes claim this is a farming out of work which belongs to them under their collective agreement. Carrier asserts that it is work which cannot be performed on its property. That to so perform it would require the purchase of very expensive equipment which could not be justified and that the warranty given is an important consideration on the part of the carrier. Carrier also states that it causes all maintenance work that can be performed in the Atlanta Shops to be done at that point and that it will continue to do so. Carrier insists that the modernization of the old traction motor at the factory, i.e., its conversion from a No. 17 or 27 to the latest model No. 37 cannot be done on the property.

The employes state that they can perform the work, that they have done so in the past and, in at least one instance, that they converted an old traction motor to a modern No. 37. The employes list certain machines in the Atlanta Shops which they contend are adequate to perform the dispute work. Carrier's Assistant Chief Mechanical Officer states positively that while the names of the machines listed might appear to support the employes' contention, they are in fact too small or otherwise inadequate to perform the disputed work.

The questions involving the contracting out of work are of great importance to both the employes and the carrier. They have been difficult matters for the Board to resolve because of the apparent conflicts in the rules with the carrier's normal managerial prerogatives and the duty it owes to operate the railroads economically and efficiently. In resolving matters of this character, the Board has announced various exceptions to the literal wording of scope and classification of work rules. One is when the carrier does not have the equipment necessary to perform the work and the amount of work to be done does not justify its purchase. Another is when special skills are involved which the employes do not ordinarily possess. In determining whether these exceptions exist, the judgment of carrier's managerial officers must be given consideration as they are charged with the economical, efficient and safe operation of the railroad. The carrier must show valid reasons for its actions in farming out work but the burden of proof rests on the claimant to prove that a violation of the agreement occurred.

On the record before us we find the following facts:

(1) The carrier has since 1939 sent diesel-electric traction motors to the manufacturer to be repaired and modernized under warranty and unit exchange agreements.

(2) The carrier does not have the equipment to do the work performed by the manufacturer under the unit exchange basis.

(3) That the acquiring of the necessary equipment to perform the work is too costly as compared with the amount of such work to be done on the property.

(4) The evidence by the employes is insufficient to show that they have performed this work in the past or that they could do so with the equipment which the carrier has.

(5) The remanufactured diesel-electric traction motors and the accompanying warranties bear more resemblance to the purchase of new motors than to the maintenance and rebuilding of old motors.

(6) The prerogatives of management permit managing officers to choose between available methods in furthering the purposes of the carrier. If such method chosen is one ordinarily pursued by management in the industry, it will ordinarily be considered a proper exercise of managerial judgment.

In connection with the above findings we desire to point out that in the making of a collective agreement with the Electrical Workers it was not contemplated that carrier would thereby be restrained in the general management of its business in the ordinary manner. The agreement was intended as a classification of work among the various crafts and not an extension of the existing scope of the work into fields not theretofore contemplated. It is only when the carrier pursues an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform that a basis for claim exists. We think the rebuilding and modernizing of old traction motors with the accompanying warranties, under the circumstances set forth herein and under the findings made, are not in violation of the classification of work rule of the Electricians' Agreement.

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 December, 1956.