Award No. 2458
Docket No. 2203
2-FEC-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the work of repairing and overhauling Diesel Electric Locomotive Unit 1001 was improperly assigned to an outside contractor on and subsequent to March 25, 1953.

2. That accordingly the Carrier be ordered to additionally compensate employes of the respective Crafts to be named later the amounts they would have earned at the overtime rate for each hour or part of an hour that other than Shop Craft employes were used to perform the work set forth in Part 1 above on and subsequent to March 25, 1953.

EMPLOYES' STATEMENT OF FACTS: Miller Shops, St. Augustine, Florida is the carrier's main overhaul and repair shops. The carrier has used the facilities at this shop for all types of major overhauling and repair to Diesel-Electric locomotives such as changing out and rebuilding diesel engines, changing out and repairing main-generators, trucks, fuel and water tanks, rewiring locomotives, painting, and remodeling locomotives in general since the advent of Diesel-Electric locomotives on the property.

The overhauling, rebuilding, and repairing of the carrier's equipment has been done by the carriers' employes within the scope of the seven (7) shop crafts working agreements. The carrier made the election to farm-out or contract the entire overhauling of the locomotive unit 1001 on or about March 25, 1953 to an outside contractor, disregarding completely the formal protest made by the various shop crafts and the current working agreement between the two parties. Due to the ultimate decision of the carrier to violate the existing working agreements the inevitable took place, there was a reduction in force.

In Mr. May's letter of April 9, 1953 directed to Mr. Gammon, he admitted unit 1001 could have been performed in the carrier's shop, a copy of which is

First, as a general rule the carrier may not contract out work covered by its collective bargaining agreements.

Second, work may be contracted out when special skills, equipment or materials are required, or when the work is unusual or novel in character or involves a considerable undertaking. (See Awards 757, 2338, 2465, 3206, 4712, 4776, 5028, 5151 and 5304.)

Third, the work contracted out is to be considered as a whole and may not be subdivided for the purposes of determining whether some of it could be performed by the employes of the carrier. (See Awards 3206, 4776, 4954 and 5304.)

Fourth, the burden of proof is on the carrier to show by factual evidence that its decision to contract out work is justified under the circumstances. (See Awards 2338, 4671 and 5304.)"

These awards clearly establish the right of the carrier to contract out the repairs of Locomotive 1001 for the reasons shown herein.

THE EMPLOYES FOR WHOM THE CLAIM IS MADE DID NOT SUFFER ANY LOSS OF WAGES.

In a statement given previously in this submission, it is shown that the force at Miller Locomotive Shop was increased from 89 men in 1952 to 105 men in 1953 and that additional experienced mechanics were not available and not procurable. The carrier's record show that during the time Locomotive 1001 was at La Grange for repairs, the carrier did not have any experienced and skilled mechanics on the furloughed list who could have been called back to work. It cannot, therefore, be claimed that there was any loss of wages on the part of the employes at Miller Shops as a result of sending Locomotive 1001 elsewhere for repairs.

The employes claim, therefore, cannot be substantiated on the basis of loss of wages.

Further, without in any way prejudicing its position, as previously stated herein, the carrier calls attention to the fact that the claim is being made "to additionally compensate employes of the respective crafts to be named later the amounts they would have earned at the overtime rate for each hour or part of an hour that other than Shop Craft employes were used to perform the work . . . on and subsequent to March 25, 1953."

It is a well established principle which has been recognized by the National Railroad Adjustment Board that the right to work is not the equivalent of work performed under the overtime rules of an agreement. This is specifically covered in Second Division Awards 1268, 1688, 1995 and 1998, Third Division Award 5117 and Fourth Division Award 802, and others.

For the reasons stated 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.

On February 11, 1953 locomotive 1001 was involved in an accident and derailment wherein the fuel tank was punctured and the fuel ignited. It was severely damaged and the carrier decided that it did not have the proper facilities, equipment and skilled mechanics necessary to accurately determine the extent of the damage or to accomplish the repairs needed. It shipped the locomotive to the builder for rebuilding and this claim was filed.

In discussion of the matter on the property on April 22, 1953 some of the local representatives of the employes admitted that the carrier was not equipped to handle all repairs to main generators, traction motors, traction motor armatures, normalizing and annealing, remachining crankcases and oil pans for Diesel locomotives, and stated that the request was for the work that could be done.

It also appears that because of the age of the locomotive some replacement parts were no longer available and extensive modifications were necessary to accommodate the use of modern parts, for which the carrier had neither the know-how nor the facilities.

We think that the work contracted out must be considered as a whole and may not be subdivided for the purpose of determining whether some of it could be performed in the shops of the carrier. Under the circumstances here shown, it appears that the carrier's decision to have the work done by the builder of the locomotive was reasonably justified and, under our awards, was not a violation of the agreement. See Award No. 2377.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2458.

The majority concedes that the instant work is included in the agreements in effect between this carrier and System Federation No. 69, but when making the award ignored the provisions of said agreements. The agreements were made pursuant to the Railway Labor Act, Section 2 Seven of which requires:

> "No carrier, its officers or agents, shall change the rates of pay, rules, or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

Therefore the majority has erred in making the instant award.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink