

Award No. 2922

Docket No. 2719

2-NP-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Northern Pacific Railway Company violated the provisions of the current agreement and thereby unjustly damaged their employes in the Electrical Workers' craft at the South Tacoma Shop when they had other than employes covered by said agreement perform the work of repairing and/or overhauling or rebuilding Diesel-electric locomotive traction motors, and

That the Carrier be ordered to pay to the following electrical workers for a total of the number of man hours used by employes of the Electro-Motive Division of the General Motor Corporation, in repairing and/or overhauling or rebuilding Diesel-electric locomotive traction motors sent to them by the Carrier starting January 4, 1956, and subsequent thereto:

Electricians

F. C. H. Sagehorn

E. E. Lipscomb

Adolph Kalinski

F. R. Ferris

Apprentice

G. Fortman

P. E. Hendrickson

G. L. Henry

J. T. Chisum

G. W. Rogers

Crane Operator

L. G. Schultz

Electrician Helpers

A. W. Engrave

B. C. Zachow

E. H. Lange

H. A. Hutchison

H. G. Berg

B. S. Cunningham

the total man hours to be equally divided among the above-named employes, and

EMPLOYES' STATEMENT OF FACTS: The persons named in the above "Claim of Employes", hereinafter referred to as the claimants, are regularly employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, at their South Tacoma Shops, Tacoma, Washington.

The carrier's South Tacoma Shop is a large, well equipped diesel-electric repair shop and is fully equipped to handle all general repairs to diesel-electric locomotives, including the repairing, rebuilding and/or overhauling of traction motors.

The electric shop of the carrier's South Tacoma Shop has the following equipment for making repairs to traction motors:

2 large lathes that will take either traction motor or large generator armatures.

1 large banding machine that can handle any size armature now in existence on this property.

1 impregnating tank, and

1 varnish mixing tank, which will handle any of the present electrical equipment.

2 large ovens, each can handle a complete generator if need be or two complete traction motors at one time, or five (5) traction motor armatures at one time in each.

1 small oven for all small electrical equipment.

3 meggers for use in testing all electrical equipment for insulation failure.

1 hy-pot to apply a running potential on all electrical equipment.

1 low voltage ductor to measure the resistance of armature and field coils.

1 350-ton press to remove and replace all armature shafts.

1 large and 1 small dynamic balancing machine to handle all equipment now in use.

2 drill presses for use of the electric shop employes.

1 soldering pot that can solder one traction motor commutator in one operation.

1 brazing machine to braze commutator coils.

1 brazing machine to braze connections on field coils.

1 motor-generator set to test run two (2) traction motors at once.

the Electro-Motive Division of the General Motors Corporation, in repairing and/or overhauling or rebuilding Diesel-Electric locomotive traction motors sent to them by the Carrier starting January 4, 1956, and subsequent thereto."

During the period January 4 to January 20, 1956, the carrier turned in eleven traction motors to the Electro-Motive Division of General Motors Corporation in part payment for eleven rebuilt traction motors. The eleven traction motors turned in to the Electro-Motive Division were not repaired or rebuilt and then returned to the carrier. The carrier has no information as to whether the Electro-Motive Division repaired or rebuilt these traction motors or scrapped them. Therefore, in the event the Electro-Motive Division determined that these eleven traction motors were to be repaired or rebuilt, this was not done for the account of the carrier.

In any view of the claim covered by this docket, the claim for payment of the number of hours consumed by employes of the Electro-Motive Division in repairing and/or overhauling or rebuilding the traction motors secured from the carrier is untenable as these traction motors became the property of the Electro-Motive Division after the exchange had been made and the carrier had no control over the disposition of these traction motors.

The carrier has shown that it did not contract with the Electro-Motive Division of General Motors Corporation for the repairs of diesel traction motors; that it purchased rebuilt traction motors from the Electro-Motive Division and as a part of the purchase price traded in used traction motors; that in negotiation of the Shop Crafts Agreement effective July 1, 1955, the carrier did not bargain away management's inherent right to purchase diesel traction motors and trade in used diesel traction motors as a part of the purchase price; that in purchasing rebuilt traction motors on a unit exchange basis, this did not constitute contracting work traditionally performed by electrical workers; and that in purchasing rebuilt traction motors on a unit exchange basis, the carrier pursued the method ordinarily pursued by management in the railroad industry. The claim covered by this docket should be denied in its entirety.

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.

During the month of January, 1956 carrier received eleven (11) rebuilt traction motors from the General Motors Corporation and during the same month delivered eleven (11) traction motors to the General Motors Corporation. The claimants demand payment of the total number of man hours consumed by employees of the General Motors Corporation in wiring, overhauling or rebuilding the motors delivered to the General Motors Corporation by the carrier. Claimants charge that Rules 35, 94, 95 and 98 of the effective agreement were violated. Carrier contends that when the motors were delivered to the General Motors Corporation they ceased to be the property of the carrier.

The record discloses that from January 4, 1956 to January 20, 1956 carrier delivered eleven (11) traction motors to the Electro-Motive Division of the General Motors Corporation, and that during the same period carrier received eleven (11) traction motors from the same company. The carrier asserts that the eleven motors delivered to the General Motors Corporation was part of the purchase price of the eleven motors received from General Motors. This claim has not been successfully denied by claimants.

The issue here to be decided is whether the carrier had a right to enter into a contract to trade, or use as part of the purchase price, used motors, for other rebuilt motors.

That carrier had sufficient equipment and adequate and competent electricians to repair or rebuild the used motors is conceded, and is not an issue here.

This Division in Award 2188 held:

"* * * The agreement appears to have been a purchase of used traction motors with a trade-in allowance for those having factory defects. Such a transaction, made in good faith does not violate the provisions of the collective agreement."

Here we have worn out motors used as a trade-in allowance for rebuilt motors. Any electrical work performed on these motors after being traded to General Motors Corporation would not come within the scope of the controlling agreement between claimants and carrier herein.

The practice of trading used or worn out equipment as part of the purchase price of rebuilt or new equipment is not new, in fact it is the usual custom.

This Division in Award 2377 held:

"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 the case at hand, carrier traded worn out equipment for equipment it could use and needed. We cannot say carrier violated the agreement in so doing.

The work claimed herein was work performed on traction motors by employees of the Electro-Motive Division of General Motors Corporation. Since the motors were traded, by the carrier, to General Motors, carrier had no control over any work that may have been performed on the motors.

We must conclude that carrier had a right to dispose of the worn out motors in any manner it so desired, and in so doing did not violate the agreement.

AWARD

Claim of employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.

DISSENT OF LABOR MEMBERS TO AWARD 2922

Contrary to the findings of the majority expressed in Award 2922 the work subject of this dispute has been regularly performed by the electrical worker employes subject to controlling agreement between this carrier and System Federation No. 7.

In reaching this decision the majority has based its decision upon grounds completely irreconcilable with decisions of this Division. The majority admits that:

"The carrier had sufficient equipment and adequate and competent electricians to repair or rebuild the used motors. . . ."

and in an effort to justify their erroneous conclusions make the unsupported statement that:

"The practice of trading used or worn out equipment as part of the purchase price of rebuilt or new equipment is not new, in fact it is the usual custom."

Examination of the aforesaid controlling agreement discloses no exception that would authorize the majority's above unsupported statement. (See specifically Rule 91 (a).) Therefore, the majority's award is clearly in error and we are constrained to dissent.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ E. W. Wiesner

/s/ James B. Zink