Award No. 3479
Docket No. 3262
2-MonC-USWA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICAN — A.F.L.—C.I.O.

MONONGAHELA CONNECTING RAILROAD COMPANY, THE

DISPUTE: CLAIM OF EMPLOYES: Claim No. MP50 states "that the Carrier has violated Articles 34 and 37 and thus, on behalf of all Roundhouse employes concerned, request such employes be paid at their regular rate of pay per hour for all hours consumed by the foreign outside concern which performed the work on Engine No. 111. The number of hours to be paid for, to be determined by the information and records received from the Carrier by request of the Union."

JOINT STATEMENT OF FACTS: The Monongahela Connecting Railroad Company is an industrial switching railroad located on the North and South banks of the Monongahela River, Pittsburgh, Pa. Its principal customer is the Jones & Laughlin Steel Corporation.

The United Steelworkers of America-CIO is the duly authorized representative of the employes in the Maintenance of Equipment Department, excluding supervisors and clerks. Such employes are covered by an Agreement which became effective on May 1, 1953 and which is in full force and effect at the present time. Those sections of the current Agreement which are pertinent to the instant claims are as follows:

ARTICLE 34

"DISTRIBUTION OF WORK

(a) In line with classification rules, practices in distribution of work that were in effect October 31, 1947, will be continued.

(b) It will not be the policy of this Carrier to contract Motive Power Department work to outside concerns, but the Carrier reserves the right to do so when in its sole judgment it is necessary. In all such cases, and prior to the performance of the work in question, the Superintendent of Equipment will call in the Local Grievance Committee and explain the situation."

ARTICLE 37

"REVISION CLAUSE

(a) These Revised Regulations shall become effective December 10, 1956, superseding all previous regulations, memoranda and understandings governing the employment of, rates of pay, and working conditions affecting employes coming under the scope hereof. All rules, regulations, interpretations or practices, however established, which conflict with these revised Regulations shall be eliminated, but prior practice and custom not in conflict with these Regulations may be continued.

(b) The rates of pay, rules and working conditions set forth in these Revised Regulations shall continue in full force and effect until changed in accordance with the provisions of the Railway Labor Act, as amended, except that no proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the Organization against the Carrier or by the Carrier against the Organization until after October 31, 1959.

(c) The foregoing Section shall not prevent changes in rates of pay, rules or working condidtions upon which the Organization and the Carrier may mutually agree."

ARTICLE 15

"DISCIPLINE AND INVESTIGATION

(b) Employes who have reasonable complaint or grievance, or who wish to appeal from any disciplinary action, may do so providing notice in writing covering the subject matter of complaint is given to the Superintendent of Equipment within ten (10) days of date of decision giving rise to the complaint. The Superintendent of Equipment will set a time and place within ten (10) days after notice is received for the purpose of discussing the case and will render decision in writing within ten (10) days after the meeting.

(c) The aggrieved party or parties may place their case in the hands of their Local Union Committee or any other person of their choice to handle in these meetings.

(d) Failing to reach agreement with the Superintendent of Equipment the case may be appealed within ten (10) days to the Committee for the Carrier. Failing to agree with the Committee for the Carrier, the case may be appealed to the General Superintendent of his designated representative, who shall be regarded as the final official to whom a case may be appealed. The time limitations for appeals and decisions under this Section shall be the same as provided under Ssection (b).

(f) Time limits, as specified above, may be extended by mutual agreement. Decision by the highest official of the Carrier designated to handle appeals of claims and grievances shall be final and binding unless within thirty (30) days after written notice of the decision of said official, he is notified in writing that his decision is not acceptable.

Any further processing of claims and grievances involved in such unacceptable decision of the highest official shall be by submission of such claims or grievances to the National Railroad Adjustment Board, or, by agreement of the parties in writing, by submission to arbitration or to a special board of adjustment as contemplated by The Railway Labor Act. If such claims or grievances are not so processed within one hundred and eighty (180) days after written notice of said highest official's decision, such claims or grievances shall be deemed to have been barred and abandoned. This compulsory method of disposition of all unsettled disputes arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions shall govern the disposition of all future cases as well as those cases pending and unadjusted as of the effective date of this Agreement."

On June 14, 1957, the superintendent of equipment, Mr. S. A. Wilcox met in compliance with Section (b), Article 34 with the committee representing the employes for the sole and specific purpose of notifying them that the carrier had decided to contract out the re-design and re-manufacture of Engine No. 111 sometime in the early part of January, 1958. Explanation was made concerning the reasons for this decision. This meeting was confirmed by letter dated June 14, 1957 which is submitted herewith and identified as carrier's Exhibit A.

The carrier carefully reviewed its decision in all its aspects, i.e., labor relations, operations, economics, and general feasibility on numerous occasions between June, 1957 and January, 1958.

During the month of January, 1958, the superintendent of equipment again advised the committee of the carrier's decision on Engine No. 111.

The engine in question was acquired by the carrier in September 1941 and this particular series of locomotives is no longer being manufactured, nor are replacement parts available through regular channels. Ordinarily due to the limited power delivered, the inaccessibility and high cost of replacement parts and the frequency of repairs to this series of locomotives, sound economics would dictate the replacing of same with new equipment. However, the carrier has a unique service requirement in an area known as the "Furnace Alley" that only locomotives of this series can accompish. Actual replacement of this equipment would necessitate the carrier placing on order for a custom built locomotive, as no standard locomotives meeting the size requirements are manufactured. As with other custom built products, the price of such a locomotive was deemed by the carrier to be prohibitive. The other alternative available to the carrier was to have the locomotive redesigned and remanufactured to conform to the original chassis.

Engine No. 111 was to be re-designed and re-manufactured at a cost of $74,500 with a new locomotive warranty according to the partial listing of specifications. Diesel electric Engine No. 110, an identical locomotive, had been similarly re-designed and re-manufactured by the General Electric Company. The General Electric Company also rebuilt Engine No. 110 of this carrier.

On February 13, 1958, the carrier met with the grievance committee for the purpose of reviewing the reasons for the carrier's decision to send Engine No. 111 to the General Electric Company for re-manufacture.

Engine No. 111 actually left the property of the carrier on February 18, 1958 for re-manufacturing.

On February 24, 1958, the carrier confirmed, in writing, the meeting of February 13, 1958, copy submitted herewith and identified Exhibit B.

The principal reasons given for this decision may be outlined as follows:

(a) The carrier did not possess the necessary skills and technical knowledge among its motive power employes for an undertaking of such proportions, nor had it ever performed work of this nature.

(b) The carrier did not possess the necessary tools or equipment for such an undertaking.

(c) The carrier did not possess the necessary facilities for such an undertaking.

(d) The carrier received the insurance of a new locomotive warranty from General Electric Company.

(e) The carrier does not have the necessary engineering personnel for such an undertaking.

(f) The work is impossible of performance on this property.

On March 4, 1958 the committee notified the carrier by letter that it wished to waive preliminary steps in the grievance procedure (Article 15) and to submit the case directly to the Adjustment Board.

On March 24, 1958, the carrier received a letter from the committee confirming an oral agreement with the carrier to waive the preliminary steps of the grievance procedure and to take Claim MP No. 50 to the Adjustment Board. This was originally proposed by the committee in their letter of March 4, 1958 and discussed between the two parties at a meeting on March 19, 1958.

On March 19, 1958, the grievance was heard by the highest official of the carrier and subsequently denied in writing in the carrier's letter of March 28, 1958.

Every reasonable effort has been made by the parties to decide this dispute in conference, failing to reach adjustment in this matter we have referred by a petition of the parties this dispute to the Second Division of the National Railroad Adjustment Board.

POSITION OF EMPLOYES: The union takes the position that the carrier's decision is not a justifiable one uder the terms of the agreement, since the carrier has known and has been aware for quite some time in the past, that the union and employes of the carrier have strenuously objected to contracting the employes' work out to foreign outside concerns or individuals. The union further contends that since there are approximately fifty (50) per cent or more employes of the roundhouse on furlough, losing work and earnings, the carrier is contractually bound to consider the employes' rights, and keep such employes at work on their jobs. The union further wishes to point out that employes are told by management that the carrier is transferring their (the employes) work to an outside group of individuals, while a great number of its own employes are being deprived of work due to being laid off or on lay-off.

The fact that these employes have many years of service with the carrier, therefore expect and rightfully so, that the carrier recognize and consider the obligation to their (carrier's) own employes. This arbitrary act by the carrier of transferring work to an outside contractor, denies the employes their contractual seniority rights to work at their jobs.

The fact that the union has status and is recognized as the exclusive representative of all incumbents of a given group of jobs or job, plainly obliges the carrier to cease from arbitrarily reducing the scope of the bargaining unit by its action in transferring such work out, which the union claims has been previously performed by the employes in the instant case.

The union's exception to the carrier's submitting Exhibit D before the Board, is based on the fact that the Union or its committee had no knowledge of its contents, or did the carrier in any of its conferences with the union's committee prior to this date, submitted such material to the committee for examination or as a matter to be reviewed, discussed or explained.

Therefore, in conclusion, the union wishes to state that the type of work in question in the instant case has been performed by the concerned employes for many years in the past, and to this date, are performing such work to the satisfaction of the carrier, with the exception only to that portion of work that falls within the scope of negotiated agreements with other labor organizations in the carrier's Pittsburgh plant.

The union further states that the language in Articles 34 and 37 does not necessarily conclude that the work in question can be arbitrarily transferred to outside concerns or groups of individuals, while the carrier's own employes are on furlough or are being furloughed and losing work and earnings by such action of the carrier.

The union therefore claims that the carrier has no right to transfer or assign to an outside concern, the performance of the work in the instant case, which is and has been a function within the carrier's plant and covered by the collective bargaining agreement dated May 1, 1953 and supplements thereto, dated December 10, 1956.

POSITION OF CARRIER: Before presenting the merits of this case, it will be constructive if some background information is provided relative to the physical layout of the J & L Pittsburgh Plant, the principal customer served by The Monongahela Connecting Railroad Company. The Pittsburgh Works is the original and oldest plant of the J & L Steel Corp. Like many another steel company it has grown and expanded with the years. Located on both the North and South side of the Monongahela River and bounded on the east and west by other growing and expanding industries, it has ever increasingly found land becoming a premium item. The building of new structures has had to be carried out so that every available square foot of land is utilized to its greatest efficiency. In view of this, the necessary placement of railroad track to service the various mills often times unavoidably creates an undesirable physical condition such as sharp turns or close clearances between tracks and buildings which conditions necessitate the use of rolling stock which is within a certain fixed overall length.

At all times these physical conditions within the J & L Steel Plant caused by growth and expansion, and resulting engineering problems present a very real and practical problem to the carrier. Such is especially so when rolling equip-

The carrier is expected to provide the tools and equipment necessary for the actual and ordinary operation of the railroad. Certainly it cannot be required to maintain a manufacturing plant for diesel locomotives. The Board has held on many occasions that where the need is for expensive equipment for which the carrier has only occasional use, it may justifiably farm out the work to persons having the equipment to perform the work. It has also been held by your Board that were special skills are required to do work of a very rare utility in the overall operation, the work may be contracted out. In the present instance neither the carrier's employes, or its engineering department possess the necessary skills, nor does it have the equipment or facilities which would be necessary for such an undertaking. (See Third Division Awards 5471, 6109 and 6662.)

The employes have never performed work of this nature or magnitude. In fact they have never contended that they had the necessary skill to perform all of the work, but rather contend that they can perform portions of the work. (See Third Division, National Railroad Adjustment Board Awards 4701, 4713, 5041, 5090, 6109, 6645, 6662, 6905, 5471, and 5485.)

The Second Division of the National Railroad Adjustment Board in Award 2468 denied a claim of the employes of the Florida East Coast Railway Company when a diesel electric locomotive was assigned to an outside contractor after it had been involved in an accident and a derailment wherein the fuel tank was punctured and the fuel ignited. In that instance the nature of the work was not of the magnitude of the work here in question. The Board in denying this claim held:

> "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.

CONCLUSION

The carrier has shown that no expressed or implied regulation of the current agreement has been violated in the instant case and that the work in question is impossible of performance by the carrier because of the lack of necessary facilities, necessary equipment and necessary skills. On the contrary, its action in contracting this work to the General Electric Compay was a justifiable exercise of its prerogative and your Honorable Board is urged to so hold.

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.

In February 1958 the carrier contracted out to the General Electric Company the redesign and remanufacture of Engine No. 111. The claim is that the farming out of this work violated the controlling agreement and that the Roundhouse employes concerned should be compensated at their regular rate of pay for all hours spent on this work by the outside firm.

During the course of the proceeding, the employes conceded that the carrier is not equipped to perform all of the involved work. In spite of the broad language of the claim, the organization does not, in fact, urge that the employes are able to do all of said work. It is contended, however, that the employes are qualified, and customarily perform, certain parts of the work in question, and that they have a contract right to these portions of the over-all job.

The agreement provision which governs in this case is Article 34, paragraph (b). This provision reads:

> "It will not be the policy of this carrier to contract Motive Power Department work to outside concerns, but the carrier reserves the right to do so when in its sole judgment it is necessary. In all such cases, and prior to the performance of the work in question, the Superintendent of Equipment will call in the Local Grievance Committee and explain the situation."

The carrier complied with the procedural requirement of the rule by explaining the situation beforehand to the appropriate representatives of the organization. It follows that there is no basis for sustaining this claim since the agreement clearly provides that the carrier has reserved the right to contract out work of the type here involved when in Management's sole judgment it is necessary to do so.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1960.