Award No. 3630
Docket No. 3238
2-T&NO-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (TEXAS AND NEW ORLEANS RAILROAD COMPANY)

DISPUTE: CLAIM OF EMPLOYES:

1. That the making of chair, caboose cushions, arm rests and tarpaulins is work that has long been recognized and properly performed by carmen upholsterers under the terms of the current agreement.

2. That the purchasing under contract or diverting the aforesaid work to manufacturers is not authorized by the current agreement.

3. That accordingly the Carrier be ordered to restore the aforesaid work to carmen upholsterers.

EMPLOYES' STATEMENT OF FACTS: The Texas and New Orleans Railroad Company, hereinafter referred to as the carrier, maintains an upholstery shop in the car department at Houston, Texas, where a force of carmen upholsterers are employed and where for fifty or more years carmen upholsterers were regularly employed and assigned to make cushions, arm rests and tarpaulins of all dimensions. This material and equipment was manufactured and was made available for use at all other points on the property on general store orders, which is confirmed by copies of letters submitted by carmen upholsterers, copies of which are submitted herewith and identified as Exhibits A, A-1, A-2, A-3 and A-4.

The carrier discontinued the making of cushions, arm rests and tarpaulins and on January 10, 1957 and continuing thereafter, placed orders with two upholster manufacturers and repair companies, as follows:

practice of this carrier to purchase standard size tarpaulins from manufacturers for a great many years.

CONCLUSION: The carrier submits that if upholsterer's work is done on the T&NO Railroad, carmen-upholsterers do the work. On the other hand, it is the prerogative of management to determine whether items shall be purchased new or an attempt made to manufacture them at the shops. In any event, the upholsterer's right to perform work does not attach to any materials on the T&NO Railroad until that material comes into the possession of that carrier. The caboose or chair cushions, arm rests and tarpaulins listed in the complaint of Local Chairman Solomon in his letter of January 22, 1958, were purchsed during the year 1957, and it is difficult to determine how the employes can contend they were deprived of work on these articles prior to the time they came into custody of this carrier.

For the reasons outlined in Items 1, 2, and 3 aforementioned, these claims are without merit and we respectfully request the Board to so rule.

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.

Parties to said dispute were given due notice of hearing thereon.

The claimants maintain that the carrier's purchase of chair and caboose cushions, arm rests and tarpaulins violated the Rules Agreement because it involved contracting out upholsterer's work which had previously been performed on the property by carmen upholsterers. The employes rely on carmen's classification of Work Rule 117 and past practice. The carrier contends that these employes do not have an exclusive right to make such items; that a mixed practice of making such articles on the property or of purchasing them elsewhere existed in the past, and that the employe's right to upholstery work is confined to such work as is done on the property.

Rule 117 provides in pertinent part:

> "Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards."

It is a fundamental principle of the employer-employe relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable lauguage.

The applicable Rules Agreement between the carrier and the employes deals with working conditions on the property of the carrier employed in the

conduct of its transportation business. We think the carmen's classification of work rule is not open to the implication that because upholstering of passenger and freight cars in shops and yards is specifically declared to be carmen's work, that the employer is thereby precluded from purchasing upholstered articles for use in the open market, if in the exercise of sound business discretion it determines such course to be necessary or advisable. It is only when the article purchased comes to rest on the carrier's property and subject to the carrier's dominion and control that the carmen-upholsterer's claim under Rule 117 attaches. Analogous situations are to be found in the purchase of other manufactured items which historically have been accepted as properly within the domain of the carrier's managerial discretion. For example, the classification of work rule defines carmen's work, among other things, as building all passenger and freight cars. It has consistently been recognized that such language does not prohibit the carrier in its exercise of sound business judgment from having such cars made by independent manufacturers. The fact that the carrier may possess adequate facilities for making some items in its own shops does not justify an implied prohibition in the classification of work rule against the purchase of similar items in the open market. We conclude, therefore, that the instant claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3630

The record in this case shows that the carrier arbitrarily discontinued the upholstering work and placed orders for performing the work with upholsterer manufacturers. It is our position that the work belongs to upholsterers subject to the agreement between this carrier and System Federation No. 162.

The trouble with the instant findings and award is that one unauthorized exception gradually grows into many exceptions and eventually is considered to be the rule, thus eroding the agreement, resulting in changes in rates of pay, rules and working conditions in violation of the command of Sec. 2 Seventh of the Railway Labor Act that "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."

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