

Award No. 3633
Docket No. 3359
2-CRI&P-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the buliding, assembling and repairing of passenger cars comes within the scope of the current agreement as Carmen's work.
2. That accordingly, the Carrier be ordered to compensate the following carmen an equal number of hours' pay at the time and one-half rate to correspond with the number of hours of labor charged to the Carrier by the Pullman Standard Car Company for repairs to Coaches 328 and 336:

Henry Doss	O. Kimbrough	L. Levy
A. Midderhoff	E. Johnson	P. Pranskietis
A. Mesolouski	J. Regis	T. Banks
A. Mareijonas	P. Maracinskas	

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, maintains a car repair shop fully equipped with machinery and available skilled Mechanics assigned Monday through Friday, capable of performing any and all repairs to railroad passenger cars. Among the skilled employes are the above-named carmen, hereinafter referred to as the claimants.

On September 23, 1957, Passenger Train #507 was involved in a wreck at Peabody, Kansas, which resulted in damage to a number of cars, necessitating repairs to them. The damaged cars were sent to carrier's car repair shop at Chicago, Illinois.

Carrier posted a notice dated November 4, 1957, abolishing 35 carmen positions, effective November 8, 1957, copy of which is submitted herewith and identified as Exhibit A. The assigned duties of each carman on Exhibit A is listed on Exhibit B.

All available carmen were working full time when the two cars were sent to the Pullman Standard Company, and we had all qualified available helpers upgraded to carmen mechanics.

As indicated, there was electrical work also to be performed in the actual rebuilding of the two cars and, as your Board in Award 2458 said:

“We think that the work contracted out 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.”

The carrier submits that the carrier's decision to have the work done on these two cars by the builders, under the circumstances involved, was justified.

The employes make claim for penalty pay for an unspecified amount of hours for the work performed, but are silent as to what work was performed. We are unable to determine how much time the builder devoted to such work. In any event, the claimants were fully employed at the time and suffered no loss of earnings and, even if the claim had merit, and without relinquishing our position as above, we submit that if the Board nevertheless finds otherwise, we submit that the penalty, if any, can be at pro-rata rate only for work not performed—a principle upheld by the Second Division and other divisions of the Adjustment Board.

On basis of the facts and circumstances in this particular case, the agreement was not violated and claim has no 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 respectfully 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 organization claims on behalf of eleven named claimants that the carrier violated Rules 27, 28(a), 110, 111, 112 and 135 of the current agreement when it contracted the work of repairing cars 328 and 336 to the Standard Pullman Company (the original builders) after a derailment of train 507 at Peabody, Kansas, September 23, 1957.

The carrier conceded the charges made by the organization, but asserted that its action fell within the stipulated exception found in the memorandum of understanding, p. 69 of the agreement. The carrier noted that its action was supported by past practices, the work was sent to the factory of origin and that it was necessary for carrier to take this action. The series of awards including 1865, 1866, 1943, 2841, 3235, 3456 and 3457 delineate the principles upon which carrier based its stand.

However, the Board cannot agree that carrier has shown a necessity for its action. Carrier conceded that the employees were capable of doing the work and that its shops were fully equipped. While the wreck of the Minneapolis Rocket created emergency conditions, the repair of the damaged cars was a matter of proper assignment. Two persuasive factors emerge indicating that management erred in their determination. The carriers forces were drastically reduced immediately after assigning these cars to Pullman and Pullman failed to return the cars in a manner that would conform to the view that "time was of the essence."

While Award No. 3461 was correct in identical circumstances in assigning considerable weight to management's determination of what is necessary for the efficient operation of the railroad, an important factor in any such determination is carrier's commitments to its employees regarding jurisdiction over work and this work may not lightly be removed from the coverage of the agreement.

The carrier cited Award No. 2458 wherein the Board held that 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. This principle has no application here. The fact that some of the work was electrician's work is immaterial if this work could be done by carrier's electricians.

AWARD

The claim is sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1961.