

Award No. 3739

Docket No. 3737

2-CRI&P-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement the Carrier improperly sent out for repairs eighteen traction motor armatures during the period of February 6 to 26, 1959, to be performed by other than employees covered by the agreement.
2. That accordingly the Carrier be ordered to compensate the following named claimants at penalty rate, in the amount of labor charged to perform the above mentioned work.

Dunahugh, Vern	Loding, William J.	Ziegler, Harold A.
Smith, Melville C. Sr.	Cord, LaRue K.	Graham, Jess D.
Barnhart, Claude M.	Randall, Harry L.	Hanneman, Glenn R.
Rusland, Claude A.	Naab, Joseph P.	Meyers, Byron
Poehls, Edward E.	Addison, Pete	Merreighn, Francis E.
Castor, Harry	Carson, Donald F.	Birlew, Charles G. Jr.
Valentine, Ervin R.	Poehls, Earl G.	Bell, Robert L.
Shaw, Thomas L.	Corder, Carl	Keopple, Donald B.
Smith, Melville C. Jr.	Brokaw, Harvey L.	Orr, Everett L.
Lear, Lowell G.	Brock, Ralph K.	Larson, John
Papish, Martin J.	Carruthers, Paul P.	Buck, Merlyn V.
Frary, Robert C.	Smith, Wallace L.	Boney, James R.
Spurr, Edwin E.	Holloway, Averill H.	Marnier, Arthur W.
Koehler, Paul W.	Thompson, George R.	Brown, David C.
Ickes, Howard A.	Anderson, Robert E.	Claeys, Herbert
Coram, Edward A.	Hobbs, Jack N.	Leedham, Howard
Virnig, Louis J.	Bowden, Orren B.	Barns, Dale H.
Ayers, Vernon L.	LePera, Dominick	Miller, Fred R.
Hardi, John	Lewis, Herbert C.	Hall, Emmett M.
Alexander, William P.	Martin, Alvin W. Jr.	Krantz, Raymond E.
Sherwood, Ishmael S.	Herlehy, John L.	Roemer, James A.
Bennett, Joel H.	Vollert, Harry	Kulhavy, Gerald W.
Borden, Roy A.	Akins, Johnie R.	

EMPLOYES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, employs regular assigned forces in their electrical repair shop at Silvis, Illinois, to perform, among other duties, the work set out in Part 1 of the claim above.

During the period involved in this dispute, the carrier sent 18 traction motor armatures to outside Concerns as follows:

"Serial No.	Date	Serial No.	Date
A 34767	2-6-59	9906	2-18-59
A 10774	2-9-59	A 11699	2-19-59
A 29899	2-9-59	A 9462	2-20-59
C 57080	2-10-59	1979	2-20-59
A 45888	2-11-59	5876	2-24-59
1636093	2-13-59	134468	2-24-59
A 4396	2-16-59	A 48562	2-25-59
5950	2-16-59	A 9711	2-26-59
2507610	2-17-59	6126	2-26-59"

The outside concerns to whom these traction motors were sent were, National Electric Coil Company, Electro Motive Division and General Electric Company. These outside concerns sent the carrier repaired armatures with the repair charge being that of the charge for labor and material to repair the armatures sent to them by the carrier. A typical example is that of traction motor armature having Serial No. 6126 which was sent to the National Electric Coil Company on February 26, 1959. On March 5, 1959, National Electric Coil Company sent the carrier one traction motor armature and on April 17, 1959, after repairing Armature No. 6126, billed the carrier for the labor and material in the amount of \$387.17 for labor and \$1,203.80 for materials for a total of \$1,590.97.

This dispute has been handled with all carrier officials designated to handle such disputes, all of whom have declined to make adjustments satisfactory to the employees. The agreement effective October 16, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing statement of dispute is adequately supported by the terms of the aforementioned controlling agreement made in good faith between the carrier and System Federation No. 6 in pursuance of the amended Railway Labor Act, because:

1. The work covered in the above statement of claim and the statement of facts is expressly impanelled in the electricians special rules 101, 103, 104 and 106.

2. The shop facilities of the carrier at Silvis, Illinois, are abundantly sufficient to handle the work in question properly and expeditiously.

3. The carrier's force of employees in the electrical workers craft possessed the necessary experience and skill to have performed the work in question in an expeditious and outstanding mechanical manner.

The carrier's action in sending this work to outside contractors was obviously deliberate and violative of the title page and of the letter and spirit

which Rock Island acquired newly factory remanufactured armatures in exchange for worn-out and antiquated armatures, the carrier can remove a traction motor armature from a locomotive in its shop and get immediate delivery of a remanufactured one carrying the manufacturer's new warranty. This can be done at a nominal cost as compared with the high cost which would result from acquiring the plant and equipment needed to remanufacture armatures on railroad property.

Because of the tremendous cost required to enable it to perform such work, and the high unit cost of such work, Rock Island has never attempted to perform it.

This case, we submit, resolves itself into one question, i.e., has the carrier, in its managerial responsibilities, the right to determine whether it should attempt to provide costly new equipment to repair worn-out and antiquated armatures in kind after which they would still be just repaired armatures or take advantage of the manufacturer's service, such as the unit exchange basis, to secure remanufactured, modernized, improved, upgraded and warranted armatures, and a type of armature that only the manufacturer can produce and one which the manufacturer is constantly striving to improve and modernize.

The inherent right of management to manage must permit managing officers to choose between available methods of furthering the purpose of the carrier. If such method is one ordinarily pursued by management in the industry, it should be considered as a proper exercise of managerial judgment. In the instant case, it was the carrier's judgment that the proper and sensible thing to do was to take advantage of the unit exchange service offered by the manufacturers and secure from them complete, modernized, upgraded and warranted armatures rather than attempt to repair or rebuild worn and antiquated ones in kind which would not give us the advantage of remanufactured, modernized, converted and warranted armatures.

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted armatures received on unit exchange purchase orders for older armatures bears more resemblance to the purchase of new ones than to the maintenance and rebuilding of old armatures.

We submit, without relinquishing our position as above, that, even if claim had merit, which we deny, there is no showing of loss or damage to any individual. It is also our position, as upheld by this and other Divisions of the Adjustment Board, that there can be no penalty, much less at time and one-half rate, for work not performed.

This same question and same type of case from this property has been before your Board on previous occasions for hearing in Awards 3228, 3229, 3230, 3231, 3232 and 3233 (Referee Ferguson) and 3269 (Referee Hornbeck), all of which were rendered in favor of this carrier. Further, Awards 2377, 2922, 3158, 3184 and 3185 have also upheld carriers in similar cases.

On basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employees' agreement.

We respectfully request your Board to deny this Claim.

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 waived right of appearance at hearing thereon.

Carrier retired from service 18 traction motor armatures, and they were shipped to the National Coil Company, General Electric Company and Electro-Motive Division on a unit exchange basis.

These armatures therefore ceased to be the property of the Carrier, and became the property of the above Companies.

The Carrier received in exchange on unit exchange purchase orders 18, remanufactured and upgraded armatures, which carried new warranty.

There is nothing more involved in this case but the trading of old property to apply on the cost of new equipment. This the Carrier had a right to do and the agreement was not violated.

Similar claims, many on this same Carrier have been resolved against the organization by this Division in Awards 3158, 3159, 3184, 3185, 3228, 3229, 3230, 3233 and 3269.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1961.

DISSENT OF LABOR MEMBERS TO AWARDS 3739, 3740, 3741

We consider as erroneous the awards accepted by the majority as authority for denying these claims. Under the circumstance we consider it unnecessary to do other than incorporate herein by reference our dissents to the awards cited by the majority as giving weight of authority for denying the instant claims.

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