

**Award No. 3741**

**Docket No. 3774**

**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 current agreement the Carrier improperly sent out for repairs, twelve complete traction motors on Jan. 29, 1959, to be performed by other than employees covered by the agreement.
- "2. That accordingly the Carrier be ordered to compensate the following named Electrical Workers 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, Robt. 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.	Marner, Arthur W.
Koehler, Paul W.	Thompson, Geo. R.	Brown, David C.
Ickes, Howard A.	Anderson, Robt. 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, Wm. P.	Martin, Alvin W. Jr.	Krantz, Raymond E.
Sherwood, Ishmael C.	Herlehy, John L.	Roemer, James A.
Bennett, Joel H.	Vollert, Harry	Kulhavy, Gerald W."
Borden, Roy A.	Akins, Johnie R.	

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 traction motors in kind after which they would still be just repaired motors or take advantage of the manufacturer's service, such as the unit exchange basis, to secure remanufactured, modernized, improved, upgraded and warranted motors, and a type of motor 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 chosen 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 manufacturer and secure from them complete, modernized, upgraded and warranted traction motors 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 equipment.

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

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 rates, 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 employees 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 its service 12 traction motors, and they were shipped to the Electro-Motive Division of General Motors Corporation on a unit exchange basis.

These traction motors therefore ceased to be the property of the Carrier, and became the property of the above Company.

The Carrier received in exchange a unit exchange purchase order for 12 remanufactured and upgraded traction motors, which carried new warranty, they had never been before on the Rock Island property.

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