

Award No. 3767
Docket No. 3568
2-SOU-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier has violated the terms of the current agreement and a long established practice by contracting out the fabrication of sheet metal appurtenances on cabooses, at Hayne Car Shop, Spartanburg, South Carolina, to persons other than Sheet Metal Workers that are covered by the current agreement.

2. That Sheet Metal Worker W. L. Perry, Spartanburg, South Carolina, be compensated thirty-eight (38) hours at regular time rate of pay for having been deprived by Carrier of his right to work on the sheet metal appurtenances.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker W. L. Perry, hereinafter referred to as the claimant is an employe of the Southern Railway Company, hereinafter referred to as the carrier, at Hayne Car Shop, Spartanburg, South Carolina. Claimant was furloughed and held an employment relationship with the carrier, in Hayne Car Shop, Spartanburg, South Carolina, retaining his rights on the sheet metal workers seniority roster in the Hayne Car Shop, at the time this claim was instituted and was eligible for call back to work under Rule 26 of the controlling agreement.

The carrier contracted to the Gary Refrigerating Company, Spartanburg, South Carolina, hereinafter referred to as the contractor, the fabrication of four (4) ice box linings, four (4) coal boxes, eight (8) lamp shields, four (4) oil pans, four (4) alcoves and four (4) filler valve boxes. All of these appurtenances (items) were made of light gauge sheet metal by the employes of the contractor, and were delivered to Hayne car shop on August 27, 1958.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the results that he has declined to make adjustment.

The agreement effective March 1, 1926, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the work of fabricating ice box linings, coal boxes, lamp shields, oil pans, alcoves and filler valve

manufactured parts and equipment. The Board readily recognized the obvious fact that the purchase of parts and equipment is the sole function of management, that by no stretch of one's imagination can the purchase of parts or equipment constitute the farming out or contracting of work contracted to the employes and that that which was never covered by the agreement cannot be farmed or contracted out.

CONCLUSION

Carrier has shown that:

(a) The purchase of manufactured caboose car parts is the sole function of management and management has not negotiated away its right to do so.

(b) Purchase by carrier of manufactured caboose car parts did not constitute farming or contracting out work which the employes have a contract right to perform.

(c) The effective agreement was not violated and does not support the claim and demand here made.

(d) Claimant was not deprived of any work which he had a contract right to perform.

(e) Prior Board awards have denied claims identical in principle.

Claim and demand being without basis only a denial award can be made.

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 Claim is that the Carrier violated the Agreement, specifically the Scope Rule, by "contracting out" the fabrication of sheet metal appurtenances on cabooses — specifically 4 ice box linings, 4 coal boxes, 8 lamp shields, 4 oil pans, 4 alcoves and 4 filler valve boxes. These are all complete items except possibly the ice box linings; and the latter are removed from consideration by the Carrier's allegation that it bought, not ice box linings but complete ice boxes, and the fact that we have an unresolved question of fact as to them. All these parts were purchased by the Carrier and when needed were installed by its proper employes.

The Carrier has always purchased parts, appliances and equipment at its discretion, but apparently did not extend such action to these specific metal parts until 1958.

It seems clear that the purchase of parts and equipment is a proper function of management and does not in general constitute a breach of Scope

Rules, or the farming out of work. Awards 1990 and 3630 of this Division and Awards 5044 and 7833 of the Third Division.

The Carrier is not in the manufacturing industry, but in the transportation business; the Agreement relates to the Carrier's business, and in the absence of express provisions or other compelling reasons cannot properly be construed as committing it to engage in any manufacturing operation or activity which it can reasonably or economically avoid. For it is under statutory obligation as well as competitive necessity to operate its business with all possible economy and efficiency.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3767

The record in this case shows that the carrier arbitrarily discontinued the fabrication of sheet metal work and placed orders for the performance of such work with sheet metal manufacturers. This work belongs to the sheet metal workers subject to the agreement between this carrier and System Federation No. 21.

Rule 123, Sheet Metal Workers' Classification of Work Rule reads in part as follows:

"Sheet Metal Workers' work shall consist of tinning, copper-smithing and pipefitting in shops, yards, buildings, on passenger coaches and engines of all kinds, the building, erecting, assembling, installing, dismantling, and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter * * * and all other work generally recognized as sheet metal workers' work.

The work of fabricating ice box linings, lamp shields, oil pans, alcoves and filler valve boxes of light sheet metal is sheet metal workers' work under the clear and unambiguous language of Rule 123.

Section 2, Seventh of the Railway Labor Act reads:

"No carrier, its officers or agents shall change rates of pay, rules, or working conditions of its employes as a class embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

There being no exceptions, this Board is required to enforce the existing agreement in accordance with Section 2, First of the Railway Labor Act.

E. W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

J. B. Zink