

Award No. 3910
Docket No. 3335
2-C&NW-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(Electrical Workers)**

CHICAGO & NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That employes of the Electrical Workers' Craft on the Chicago and North Western Railway have been unjustly damaged since March 18, 1957, due to the Carrier abolishing all jobs in Waukesha Repair Shop at California Avenue and discontinuing the repairing, rebuilding and overhauling of the electrical equipment on Waukesha Ice Engines and Waukesha Generators and sending Waukesha Ice Engines and Waukesha Generators out for overhauling and repairs and having said work performed by those not covered by current agreement.

2. That accordingly, the Carrier be ordered to compensate the employes on seniority roster at California Avenue Coach Yard, twelve hours for each unit sent out to an outside contractor for overhauling and returned to property for application to C&NW passenger equipment since March 18, 1957 until this dispute is settled and above mentioned work returned to the property of the Carrier.

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.

Pursuant to Award 3608 and order of this Division this case was remanded for further showing and determination of pertinent facts. In response thereto further showing has now been made.

From the record we find that Carrier, apparently in good faith, in the exercise of managerial judgment determined not to continue having certain of its electrical equipment overhauled beyond the stage of ordinary repair, and entered into an agreement with Triangle Engine Builders whereunder it sold to that company the Waukesha Ice Machines and Waukesha Generators here involved at a set price per unit and purchased from it at a set price rebuilt ice machines and generators, guaranteed against faulty workmanship and material for 3,000 hours or one year.

It further appears that the units so sold to Triangle were not separately overhauled but that they were entirely dismantled along with other units from Carrier or other railroads, without identity as to their origin; that such parts generally are interchangeable; that from such salvagable parts, some changed and improved, and new parts as required, Triangle assembled the remanufactured units sold to Carrier and other purchasers.

So far as appears all units sold by Carrier were in need of overhaul rather than ordinary repair. As said in Award 3184 of this Division: "there is no provision of the agreement which requires the carrier to repair and particular equipment nor which restricts its right to discard and replace unserviceable equipment instead of repairing it * * *" We find no showing of subterfuge here but only the bona fide sale of unserviceable equipment and purchase of similar but improved equipment for use in its place. We think the agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of January 1962.

DISSENT OF LABOR MEMBERS TO AWARDS 3910, 3911 AND 3912

The record shows that the repairs and overhauling of Ice Engines and Generators is work covered in the agreement between the Chicago and North Western Railway, and all that class of employes represented by System Federation No. 12 Railway Employes' Department A. F. of L. - C. I. O. Employes in the electrical workers', sheet metal workers' and machinists' craft performed their respective work on ice engines and generators for over twenty years, that is, from 1936 to 1957 when the carrier, under the guise of selling such equipment as unserviceable, contracted the work out and it was performed by employes not subject to the agreement between the parties to the present dispute. This is in violation of Rule 29 which provides that "None but mechanics and apprentices regularly employed as such, shall do mechanics' work as per special rules of each craft", in this instance Rules 62, 103 and 115.

The findings of the majority is an attempt to uphold the carrier in defeating the very purpose of the governing agreement and a contravention of the Railway Labor Act's prescription to "maintain agreements."

LABOR MEMBERS

E. J. McDermott

C. E. Bagwell

T. E. Losey

Edward W. Wiesner

James B. Zink