Award No. 3996
Docket No. 3834
2-CRI&P-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly contracted out the rewinding, repairing and rebuilding of 13 complete traction motors, including armatures during the period of August 6 to 31, 1959, to be performed by employes of contractors not subject to the current agreement.

2. That, accordingly, the Carrier be ordered to compensate the following named Claimants, at penalty rate, for the number of hours required to perform the above-mentioned work according to electric shop records:

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

ized, improved, upgraded and warranted motors and armatures, and a type of motor and armature that only the manufacturer can produce and 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 and 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 equipment.

As previously stated, the receipt of the remanufactured, modernized, improved, upgraded and warranted motors and armatures received on unit exchange purchase orders for older motors and armatures 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 employes' 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.

The instant claim involves the same labor agreement and essentially the same factual situation as those discussed in our Award 3994. What we have said in that Award with respect to the use of the "Unit Exchange Service" is also applicable to the claim with which we are here concerned.

Accordingly, we hold that the instant claim is without merit for the reasons stated in our aforementioned Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1962.

DISSENT OF LABOR MEMBERS TO AWARD NUMBERS 3994, 3995, 3996, 3997, 3998

This Division in its Awards 1943, 3457 and 3720 found that the Carrier violated the Agreement when it contracted the rewinding, repairing and rebuilding of five traction motors and fifty-seven armatures to the Electro-Motive Company and National Electric Coil Division of McGraw-Edison Company.

In these disputes without any change in the Agreement this same Carrier contracted the rewinding, repairing and rebuilding on one-hundred-and-four traction motors, two generators and two armatures to the Electro-Motive Company and National Electric Coil Division of McGraw-Edison Company. Therefore, the Carrier violated the Agreement.

The majority in Awards 3994, 3995, 3996, 3997 and 3998 failed to comply with the provisions of the current Agreement that has been interpreted by this Board in Awards 1865, 1866, 1943, 1952, 2841, 3235, 3456, 3457, 3556, 3633 and 3720, resulting in the Employes doing the same work and covered by the same Agreement, not being given equal treatment or equal protection under the law. Therefore, the majority's awards in these claims are in error and we are constrained to dissent.

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

James B. Zink