Award No. 4003

Docket No. 3566

2-CRI&P-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when 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 AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly contracted out the rewinding of six traction motor armatures on June 11, 1957, to be performed by employes of contractors not subject to the current agreement.

2. That, accordingly, the Carrier be ordered to compensate the Claimants who were assigned to this class of work, at penalty rate, for the number of hours required to perform the above mentioned work according to electric shop records.

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.

This case presents the same issue, involving the same agreement and parties as considered in Award No. 4002 and like award should follow.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1962.

DISSENT OF LABOR MEMBERS TO AWARD NUMBERS 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010

All of these claims in accord with Awards 3788, 3789, 3790, 3791, 3792, 3793, 3794, 3795, 3796 were returned to the property to show by written contract, or correspondence, or otherwise the actual agreement under which the work in dispute was sent out to the companies and the nature and extent of the work that was performed as the findings in the lead case, Award 3788, reads in part as follows:

> "This claim is one of at least eleven claims between the same parties and apparently involving similar procedure by carrier in sending out traction motor armatures for rewinding or rebuilding or exchange to National Coil Company or General Electric Company over the period from February 14, 1957 to January 2, 1958.
>
> The first of these claims to be considered, which was allowed in Award 3457 of this Division, involved armatures sent out in November and December, 1957. Carrier in denial of that claim made no denial of contracting out the work but stated that during that period it found it necessary to send the armatures out to those companies to be rewound due to an overflow of defective motors and force of electricians not sufficient to make repairs.
>
> The second, which was allowed in Award 3720, involved armatures sent out to said companies between February 28 and April 15, 1958. In its first submission therein carrier made like statements as in the other case that the rewinding was contracted out due to an overflow of defective motors and force of electricians not sufficient to make repairs, but in rebuttal carrier asserted that the armatures sent out were worn-out armatures which carrier did not consider it consistent to repair or rebuild; that they were sent to the factories on a unit exchange basis for rebuilt armatures; that claimants had not the knowhow or equipment to perform such work, and that it was only co-incidental if certain of the rebuilt armatures had formerly been on carrier's property.
>
> In its submissions in the nine cases subsequently being considered, whether arising from sending out armatures to said companies before or between or after the times involved in the cases previously considered in awards 3457 and 3720, carrier has denied that the armatures were sent out to be rewound and stated that they were worn-out armatures sent out on a unit exchange basis as stated in the rebuttal in the second case above noted.
>
> In view of the apparent similarity of situations and changing contentions of carrier we think this claim should be returned to the property with opportunity, within 90 days, to show by written contract or correspondence or otherwise the actual agreement under which these armatures were sent out to the companies and the nature and extent of the work that was performed on them."

These nine claims involved the rewinding of 141 traction motor armatures, one alternating current motor, and three complete traction motors for repairs during the period of February 1957 through January 1959. In reply to the above quoted findings in Award 3788 the Carrier furnished the Board with the following: Exhibit C-1 dated August 15, 1961, unit exchange service offered to

railroads by National Electric Coil Division of McGraw-Edison Company; Exhibit C-2 dated December 1, 1960 unit exchange service offered to railroads by Electro-Motive Division, General Motors Corporation. These two exhibits were dated more than a year after the work involved had been performed, so they could not be considered as the actual agreement under which the armatures were sent out to these companies as requested by Awards 3788 through 3796. However, each of these exhibits support the employes position that the Carrier had contracted out the work involved as they read in part as follows:

Exhibit C-1

"Upon completion of rebuilding the railroad's returned unit, an invoice will be issued to cover the labor and material required to perform the rebuilding."

Exhibit C-2

"Upon completion of rebuilding the railroad's returned assembly, an invoice will be issued to cover the labor and material required to perform the rebuild. The Unit Exchange invoice will amount to only the requirements for rebuilding the assembly returned by the customer. No premium is charged for Unit Exchange service at Electro-Motive."

Both of these exhibits as quoted prove that the railroad under these contract arrangements were paying to have the unit repaired and rebuilt and nothing else. The Carrier also furnished Exhibit C-2 through C-11 which were invoices for the rewinding of six of the 141 armatures involved in these claims. In review of all six invoices, they show that the same work was performed on all six armatures. The same amount was paid for each as they read in part as follows:

ARMATURE

"REWIND—Including stripping, cleaning core, testing commutator. Furnish and install class IIHHX silicone Mica-glas coils, equalizers and winding supplies, Banding, vacuum pressure impregnate in varnish. Turn, undercut and grind commutator. Dynamically balance armature. 1091.30"

In addition to the above, invoices shown as Exhibit C-6, C-7, C-8, C-10 and C-11 read in part as follows:

"Furnish and install 1— new spacer 4.37"

In addition to the above, invoices shown as Exhibits C-6, C-7, and

C-11 read as follows:

"Furnish and install new armature shaft 144.42"

Invoice shown as Exhibit C-10 also shows the following:

"Repair commutator, furnish and install 2— Mica — V rings 203.37."

This the Carrier submits as the nature and extent of the work that was performed on these armatures. This proves the employes' position that the Carrier violated the agreement by contracting work covered by the agreement to these outside companies as the above shows the only work that was performed on these armatures was the rewinding, installing new armature shafts,

new spacer, and repairing a commutator, which is definitely work covered by the agreement. See Awards 1943, 3457 and 3720.

The employes in their reply to the Board in Awards 3788 through 3796 submitted Exhibit 4 which is the Carrier's work check list for their employes when rewinding armatures which covers all the items plus other items of work that was performed by the National Electric Coil Company shown in the Carrier's Exhibit C-6 through C-11. The employes also submitted to the Board Exhibits 5 and 6 which were pictures from an article carried in the magazine "Railway Locomotives and Cars" in its September and November 1955 issues regarding the Carrier's modern machinery and equipment for the rewinding of armatures at their Silvis Shops, which proves the Carrier has the machinery and equipment and the employes with the necessary skill to perform the work as they have performed the work at this shop for years.

This Division of the National Railroad Adjustment Board has sustained the employes' position that the agreement was violated when this Carrier on previous occasions sent work covered by the agreement to outside companies in their Awards 1866, 1943, 1952, 2841, 3235, 3456, 3457, 3556, 3633 and 3720.

Awards 1943, 3457 and 3720 involved the same parties the same agreement and the same type of work. A review of these claims reveal that the Carrier over the years has violated the agreement by contracting the work covered by the agreement to outside companies using one excuse after another for their action trying to get the Board to agree with one of them. In Award 3720 the Board pointed out where the Carrier even changed their reason for contracting out the work involved, they changed to the same reason they are using in these claims. This resulted in the Board rendering Awards 3788, 3789, 3790, 3791, 3792, 3793, 3794, 3795 and 3796 returning the disputes to the property to show by written contract or correspondence or otherwise the actual agreement under which these armatures were sent out to the companies and the nature and extent of the work that was performed on it. The information that was furnished to the Board as pointed out above proved the position of the employes that there was no difference in the extent of the work performed on the armatures in these disputes covered in Award 3720.

In the findings of the majority with Referee Stone as a member in Awards 1943 and 3720 recognized that the Carrier violated the agreement in dispute when they contracted identical work to the same companies.

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