

Award No. 4011
Docket No. 3680
2-EJ&E-BM-'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. 20, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. — C. I. O. (Boilermakers)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, other than the Boilermakers' Craft was used to rebrick and apply a plastic lining over the fire bricks in stationary boilers Nos. 64 and 65, located at Joliet Shops, Joliet, Illinois, on July 14, 15, 16, 17, 1958.

2. That accordingly the Carrier be ordered to compensate the following Boilermakers and Boilermaker Helpers twelve (12) hours each at their regular rate of pay for the above listed dates.

Boilermakers

M. Gleason
M. J. Gray
J. Whalen
L. Kwarta
J. Gleason
J. Valek

Boilermaker Helpers

F. Brennan
F. Schoppe
J. Bates
I. Kubinski
G. Bucciarelli
T. Kemp

EMPLOYEES' STATEMENT OF FACTS: On July 14, 15, 16, 17, 1958, management contracted out the work of fire bricking and placing a plastic coating over the fire bricks in the fire boxes of stationary boilers No. 64 and 65 at the Joliet Shop to the Plibrico Company of Chicago. The work consisted of placing fire brick about 3 or 4 feet high on each side and one end of the fire boxes and then a ready mixed soft material called Plibrico which comes in 14 inch squares was placed on the fire bricks about 12 inches thick, this material hardens when heat is applied. The Plibrico material is applied by hammering, using air hammer, air rammer or can also be applied and packed with a hand hammer. Employees of the boilermakers' craft were making repairs on the stationary boilers at the time the contractor was

that it acted in good faith toward the organization concerned and that its decision was entirely proper.

V. Conclusion

The carrier is confident that it has demonstrated that it acted properly in assigning the work in question to an outside contractor in view of the facts that:

1. The claimants did not hold an exclusive right to perform any type of refractory installation in Carrier's stationary boilers, much less did they hold an exclusive right to perform the type of refractory installation discussed in this submission.
2. The claimants, who previously had performed a common re-bricking job only once in the 30 year history of these subject boilers, understandably lacked the skills required satisfactorily to complete an installation of this magnitude and design.
3. The carrier, through a mutual understanding in clear and unambiguous terms, retained the inherent right "to have repair work performed by outside contractors, agencies, etc.,".

In view of the foregoing, the carrier respectfully requests that the claims in this case be denied.

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.

Carrier contracted out to Plibrico Company the work of relining stationary boilers Nos. 64 and 65 at its Joliet shops, including the labor, supervision and material, which consisted principally of carborundum brick and a plastic refractory material with special anchoring devices to maintain and support the plastic wall installed above the lower wall of carborundum brick.

The use and installation of this type of boiler lining was new on Carrier's property. With proper supervision and instruction claimants might well have been able to install this relining but the Plibrico employes were expert at the work and the Plibrico Company gave a guarantee when the work of installation was performed by them.

The Organization in its submissions relies on Boilermaker Rule 67, which provides that:

"Boilermakers' work shall consist of laying out, cutting apart, building or repairing boilers, tanks and drums; inspecting, patching,

riveting, chipping, calking, flanging, and flue work * * * and all other work generally recognized as Boilermakers' work."

It supports the application of that rule by asserting that the bricking of fire boxes on stationary boilers has in the past been performed by Boilermakers and that they had the knowledge and skill to perform the work here required.

Rule 67 appears to be ambiguous as to whether the building and repairing of boilers should include the brickwork of lining and relining, or only the fabricating and installation of the metal parts of the boiler apart from the lining. In looking to the construction of the rule on the property, we find that the record fails to support the assertion of the Organization that the bricking of the fire boxes on the stationary boilers has in the past regularly or generally been performed by Boilermakers.

Further, as shown by Carrier in its submissions, in the Memorandum of Understanding between Carrier and Committees representing the Shop Crafts and Maintenance of Way employes, relative to division of work between the crafts under their agreements, dated November 8, 1939, it was specifically stated that "the right of the Company to have repair work performed by outside contractors, agencies, etc., is not disturbed."

In its Rebuttal, for the first time, the Organization sets out a Letter of Understanding concerning future brick work in the boilers here involved, to which Carrier has had no opportunity to reply. Under the Rules of Procedure set out in Circular No. 1 of this Board, it appears that the agreement or rules involved should be quoted in the Submission. It further appears that Carrier duly filed letter of objection to the inclusion of new matter in the Organization's Rebuttal and asked that it be stricken and sought to make reply thereto but the Division declined to receive that letter on the basis that it constituted surrebuttal which is not permitted under the rules of this Division. Certainly, in the absence of permission to make reply thereto, no new matter set out in rebuttal in violation of the Rules of Procedure, should be considered by the Division in determining the dispute.

Under the issues properly submitted we find that the Organization has failed to show that Boilermakers have the exclusive right to perform the work here contracted out to Plibrico or that Carrier violated the agreement in so contracting.

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 NO. 4011

This award is erroneous in failing to apply the provisions of all formal agreements executed by the parties on the property.

The majority refused to consider formal letter of understanding executed by the parties dated August 28, 1953 on the grounds it was not quoted in the original submission.

This reasoning is completely lacking in merit as awards have consistently held that the provisions of all formal agreements executed by the parties are before the Board at all times for consideration in interpreting their mutual rights. Representative of much authority on this question is contained in Second Division Award 2789 and First Division Award 15851.

Second Division Award 2789, with Referee D. Emmett Ferguson sitting with the Board, reads in pertinent part as follows:

“All formal agreements executed by the parties should at all times be available for consideration in interpreting their mutual rights. Decision No. SC-74, dated at St. Louis December 9, 1940, now included in this docket is an expression of understanding which is not to be considered as new material at whatever time introduced during the progress of this docket before this Division.”

First Division Award 15851, with Referee Livingston Smith sitting with the Board, reads in pertinent part as follows:

“No rule of this schedule need be specifically pled at any specific time to be applicable. All of the schedule rules are before this Board at all times and may be given such consideration and weight as is deemed proper.”

Therefore the Award is erroneous and palpably wrong.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink