

Award No. 4066
Docket No. 3903
2-NYNH&H-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O.
(Electrical Workers)

THE NEW YORK, NEW HAVEN &
HARTFORD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That employes in the Mechanical Department were unjustly damaged and the provisions of the current agreement were violated when the Carrier elected to contract out the winding and repairs of armatures, field main generators, and component parts to the General Electric Company at North Bergen, New Jersey.
2. That accordingly the carrier be ordered to compensate the employes so damaged as follows:
 - J. Terito — 60 days straight time at \$2.608 per hour
 - W. Grossjung, Jr. — 60 days straight time at \$2.608 per hour
 - D. Marshall — 60 days straight time at \$2.608 per hour
 - G. Cafferata — 60 days straight time at \$2.608 per hour
 - D. Mangiamele — 60 days straight time at \$2.608 per hour
 - D. Colombo — 60 days straight time at \$2.608 per hour
 - E. Pellecchia — 60 days straight time at \$2.608 per hour
 - T. McCormick — 60 days straight time at \$2.608 per hour

EMPLOYEES' STATEMENT OF FACTS: That the electrical workers (armature winders) J. Torito, W. Grossjung, Jr., D. Marshall, K. Cafferata, D. Mangiamele, D. Colombo, E. Pellecchia, and T. McCormick, hereinafter referred to as claimants, were employed by the New York, New Haven &

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 essential facts of record in this case are as follows: (1) On July 31, 1959, carrier formally put into effect its decision to shut down (through sale) its repair shops at Van Nest. (2) Before that date said shops had complete facilities to repair the traction motors involved herein. (3) During May 22-29, 1959, carrier shipped a number of traction motors to the General Electric Company shops at North Bergen, New Jersey. These motors were sold to G. E. on a unit-exchange basis. (4) Some time later carrier purchased on a new-warranty basis, five re-conditioned traction motors from said G. E. facility. Said five motors bore the same serial numbers as five of the motors that had been shipped and sold during May 22-29. (5) There is no evidence that any of the other motors sent by carrier to G. E. on the unit exchange basis were later received back by carrier.

Given these facts, the issue posed by the parties' contentions is whether carrier's use of the unit-exchange-with-new-warranty system with G. E. constituted a contracting-out of work that was reserved to carrier's repair electricians and thereby prohibited under Rules 29, 101, and 123 of the parties' agreement.

On the contracting-out question this Division has ruled against carriers where (1) units were repaired by outside firms and were returned to carriers as recognizable units and (2) carriers had the men, equipment, and parts to do the work of reconditioning.

On the other hand, this Division has ruled for carriers where (1) the unit-exchange-with-new-warranty system was in effect between the carriers and outside firms; (2) the units sent in by the carriers were, in effect or actually, scrapped and replaced by more modern, improved units; (3) by implication, the identity of the units was lost in said contractual exchange system; and (4) by further implication, it was not of compelling importance whether the carriers had the men, equipment, and parts to do the reconditioning or improving.

The substance of the second of the above-mentioned group of awards is not essentially at variance with that of the first group. The critical question seems to be whether, under the unit exchange system, a bona fide loss of identity occurs between the units shipped and sold by a carrier to the outside firm and the units shipped and sold in the opposite direction. If the answer is "yes", then the carrier cannot be judged to have participated in a legalistic subterfuge to defeat the meaning and intent of the labor agreement. If "no", the carrier must be held to have violated its labor agreement.

Applying this principle to the facts of the instant case, the Division then finds as follows: (1) No one may properly hold that carrier was not within its rights to dispose of its Van Nest shops when and as it did. The

issue here must therefore be confined to what happened before July 31, 1959. (2) Carrier in its submission admits that it bought back from G. E. five of the traction motors listed by serial number in general chairman De Ritis' letters of July 9 and August 26, 1959, as having been sold to G. E. during May 22-29, 1959. (3) Carrier had the burden in this case of establishing that (a) this particular exchange was purely coincidental; and (b) the five units it sent to G. E. were in effect scrapped and the five it bought were improved, modernized ones. In the Division's opinion these burdens were not sustained in carrier's submissions.

In the light of the findings above, the Division is compelled to sustain the instant claim to the extent of the straight-time hours used during the period here involved by G. E. electrical workers at North Bergen on the re-conditioning of the five traction motors whose serial numbers were 7083983, C 7083983, C 0722900, C 0727011, and CL 7027011. The total straight-time pay for said hours shall be divided among the claimants herein in a manner and in amounts to be decided by the organization that represents them.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1962.

CONCURRING AND DISSENTING OPINION OF LABOR MEMBERS TO AWARD NUMBER 4066

Rules 29, 101 and 123 of the current Agreement read in part as follows:

"Rule 29

Assignment of Work.

'None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rule of each craft, except foreman at points where no mechanics are employed.'

'Rule 101

Classification of Electricians

Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of generators, switchboards, meters, motors, and controls, rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage

batteries except as provided in Rule 104, axle lighting equipment, electric lighting fixtures and cables: winding armatures, fields, magnet coils, rotors, transformers and starting compensators: inside and outside wiring at shops, building and yards and conduit work in connection therewith, including steam and electric locomotives passenger trains, motor cars, electric tractors, and electric trucks. High tension power house and substation operators, electric crane operators for cranes of 60-ton capacity or over, electrician's work performed by employes of the Maintenance of Way Department on tugboats and floating equipment in New York Harbor territory, and all other work generally recognized as electricians' work.

'Rule 123

UNDERSTANDING IN SPECIAL CASES

Armature winders—Van Nest — performing the following work — Rewinding of and major repairs to traction motor armatures and fields, also main transformers.

Dismantling and rebuilding commutators of all types.

Rewinding induction motor stators or rotors, train control dynamotors, headlight and generators, tractor armatures and fields.

Dismantling, repairing, reinsulation and rebuilding all types of preventive coils, reactors and auxiliary, transformers.

Stripping, repairing or rewinding all types of axle lighting generator armatures and fields.

Stripping, reinsulation and rebuilding all types main and auxiliary resistors.

Dismantling, reinsulating and rebuilding all types collector rings.

Stripping and rewinding main generator, synchronous motors, exciter generators and starter motors, such as are used on locomotives 0112-16-0216-17.

Stripping and rewinding all types battery or auxiliary generator armatures and fields.

Rewinding all types compressor or blower motor armatures or fields.

Rewinding all other types of auxiliary motor armatures or fields not specifically mentioned above.

We therefore agree with the finding that the Carrier violated the current agreement when the rewinding, repairing and rebuilding of five traction motors was contracted to the General Electric Company.

We do not agree with the conflicting finding that the Carrier did not violate the agreement when the rewinding, repairing and rebuilding of other traction motors, armatures, fields and generators was contracted to the General Electric Company. This violation results in the employes covered by the same agreement not being given equal treatment or equal protection under the law. We are therefore constrained to dissent from this finding.

E. J. McDermott

T. E. Losey

C. E. Bagwell

R. E. Stenzinger

James B. Zink