Award No. 4091
Docket No. 3976
2-B&O-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Baltimore & Ohio Railroad Company violated the provisions of the current working agreement between the Carrier and System Federation No. 30, particularly Rules 29 and 125, when it assigned other than electrical workers employed in the Electrical Department of the Carrier to make routine electrical repairs and replace electrical equipment on elevator No. 300, located in the Northside Warehouse, Pittsburgh, Pennsylvania on March 1, 2, 3 and 4, 1960.

2. That accordingly, the Baltimore & Ohio Railroad Company, (hereinafter called the Carrier) be ordered to compensate electricians George Eberman and Charles McWhirter (hereinafter called the claimants) for eight (8) hours each, March 1, 2, 3 and 4, 1960 as a result of this violation.

EMPLOYES' STATEMENT OF FACTS: At Pittsburgh, Pennsylvania, the carrier owns, operates and maintains what is generally known as the Northside Warehouse, the space therein being leased to tenants for the handling and storage of certain and various commodities transported via the carriers' lines and by means of other types of transportation as well as the distribution of these commodities by the various types of transportation. Originally, this facility was used both as a freight depot for handling the carriers' business as well as for storage facilities, but during recent years it has been utilized primarily for storage purposes and distribution of commodities received through the carriers' lines or by means of other transportation.

During the entire life of this facility, tenants were required to lease individual space and included in such leases, certain facilities were made

ment thereon, and **where a Carrier owns property used not in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement.** The leased warehouse here involved was leased and used for purposes excluding it from the Agreement."

Again, for example in Award 5246 (Third Division) (BRS v. SIRT) (Boyd) is was held in part "* * * the Scope Rule of a Collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad."

Again, for example in Award 7442 (Third Division) (BMWE v. UP) (Shugrue) it was held in part: "We find that the operation of the timber treating plant was not connected with railroad operations and that the scope of the agreement did not confer upon maintenance of way employes the exclusive right to perform new construction work of this nature and under the circumstances of this docket on property leased by the carrier in an industry not directly involved in railroad operations."

In this Division's Award 3435 (EW v IC) (Referee Murphy) claim was denied with the following findings:

> "The carrier owned a warehouse at New Orleans but it had not been in use for a number of years.
>
> As a matter of accommodation, various meat packers who desired space, were assigned portions of Warehouse No. 1 to expedite the unloading, segregation and delivery of their products. Mr. William J. Schroeder was permitted to use a portion of the warehouse and found it necessary for his use to add electrical conduits, wiring, etc. The organization contends that under the agreement this work, which was contracted by Mr. Schroeder to a local firm, was work that should have been done by claimants.
>
> We are unable to find any violation of the agreement in this case. The purpose of the agreement between the carrier and the organization is to provide rules and regulations for the orderly operation of their common business, which is the operation of the railroad.
>
> The record in the instant case does not show that the carrier was using this warehouse for its own operation, in fact, it reveals that it was used for the sole purpose of Mr. Schroeder, for other purposes which are outside the purview of the agreement."

The carrier submits in the instant case that the claim is without merit at all of its parts. The carrier respectfully requests that this claim be denied at all its parts.

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.

The work in question constituted the heavy overhaul of four freight elevators which was necessary to permit the use of rented out premises, and was performed by the Elevator Repair & Construction Company of Pittsburgh, under a required permit from the Pennsylvania State Department of Labor and Industry, Bureau of Inspection, Division of Elevators. The Otis Elevator Company had without protest performed a similar heavy overhaul job in 1952 but was apparently unwilling to attempt it again.

The electrical work constituted an integral but certainly not a major part of the project, and the record does not indicate that it could reasonably have been segregated from the whole. Under analogous circumstances similar claims have been denied by this Division. Awards 2186, 2377, 2458, 3278, 3433, 3461 and 3559.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.

DISSENT OF LABOR MEMBERS TO AWARD NOS. 4091, 4092 AND 4093

The majority found that the work in these disputes was work included in the Electrical Workers Special Rules, but when making their Awards they ignored the provisions of the Agreement, as the pertinent parts of the rules read as follows:

"Rule 29

None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft . . ."

"Rule 125

Electricians' work shall include electrical wiring, maintaining, repairing, rebuilding, inspecting and installing of all generators, switchboards, meters, motors and controls, static and rotary transformers, motor generators . . . inside and outside wiring at shops, buildings, yards, . . . and all other work properly recognized as electricians' work."

This Agreement was made pursuant to the Railway Labor Act, Section 2 Seven of which requires:

"No carrier, its officers or agents, shall change the rates of pay, rules, or working conditions of its employes, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

Therefore the majority has erred in making these Awards.

T. E. Losey

E. J. McDermott

R. E. Stenzinger

C. E. Bagwell

James B. Zink