Award No. 4347
Docket No. 4194
2-EJ&E-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That the Carrier violated the current agreement when it had other than Elgin, Joliet and Eastern, Machinists turn armatures of eight traction motors sent to National Coil Company for repairs.

(2) That Machinist Robert Ryan be compensated in the amount of two (2) hours pay for each of the eight armatures machined by the National Coil Company.

EMPLOYES STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, maintains at East Joliet, Illinois, a Back Shop and Roundhouse with a force of machinists, helpers and apprentices it claims to be adequate for the proper overhaul and maintenance of its locomotives.

The machine shop has adequate machinery for the turning and truing of traction motor armatures and this work has always been performed by the machinist craft in this shop.

On August 10, 1960, the carrier sent the following traction motors to the National Coil Company, Columbus, Ohio, for repairs:

Motor #D-27	CR23295	Serial #3986
Motor #D-27B	CR23298	Serial #4143
Motor #D-17B	CR23297	Serial #9963
Motor #D-27B	CR23296	Serial #262-A

These motors were returned to Joliet Shop August 26, 1960, completely overhauled and the armatures turned.

On September 2, 1960, the following traction motor armatures were sent

In conclusion, the carrier submits that no rule or agreement with the organization was violated. **The carrier has not followed or pursued an unusual course for the evident purpose of depriving Claimant Ryan, or anyone else, of the work which he ordinarily and traditionally performs. (Award No. 2377)**

The work herein involved is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts were within the capacity of the carrier's forces. **(Awards Nos. 3206, 4776, 4954, 5304, 5563,** of the Third Division.)

The work as a whole was properly performed by National Electric Coil because it required special skills, equipment, and the work as a whole was unusual and novel in character as far as our machinists and electricians were concerned. **(Awards Nos. 757, 2338, 2465, 3206, 4712, 4776, 5028, 5151, 5304, 5563,** and **6492** of the Third Division.)

These same principles were set forth by Referee Carter in Second Division **Award No. 1808,** and he diligently followed them in **Award No. 2377.**

It would be gross error to hold this carrier, the "J," to the same standards and principles that are applicable on large carriers whose size permits the luxury of adequate qualified personnel and complete traction motor repair facilities. Sustaining awards on such carriers are irrelevant and immaterial to the proper determination of the instant dispute with the organization. Specifically in point, there is no competent authority in support of the organization's far sweeping position. The fact that such concerns as Electro-Motive and National Electric Coil are set up so as to offer their services to carriers on a repair and return basis makes it self evident that all carriers in this industry are not chained to the standards which the organization now is endeavoring to impose on this carrier.

For all of the above shown reasons, there is no semblance of merit in this claim. Accordingly, it should be denied in its entirety by the Board.

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 Carrier sent eight traction motors to National Electric Coil, Columbus, Ohio,—four on August 10 and four on September 26, 1960. The employes assert that the work performed on these motors consisted of turning and truing the armatures and properly belonged to the Machinist claimant on account of which they ask that he be compensated for 16 hours.

The record discloses in detail the character of the work done on these motors by the contracting firm. It is sufficient to say that this embraced, without limitation, the upgrading of three of the units from type D-17B to type D-27, the conversion of one from oil to grease lubrication, and the complete cleaning, reinsulation, testing and evaluation of four others that were

more than ten years old and nearing the end of their usefulness. Turning and truing was only an incidental part of the work performed.

The Carrier has established by conclusive evidence that it does not possess the mechanical facilities or the personnel to do this kind of work in its own shop and that work of the character here involved has been contracted out for many years, with the knowledge, if not the acquiescence, of the complaining organization. The situation thus disclosed casts upon the organization the burden of proof.

A full and careful review of the evidence properly before us leads to the inescapable conclusion that the organization has failed to make out a case. The carrier was not required to make two jobs out of one by permitting the claimant to do the incidental turning and truing, which he might have been capable of doing, and then contracting out the major tasks which could not be performed on the property. What we have said is not to be construed as in any way relaxing the right of employes to perform the functions guaranteed them by Rules 30 and 54 of the effective Agreement; nor would we be understood as extending the carrier's managerial prerogative to contract work out.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.

LABOR MEMBERS DISSENT TO AWARD 4347

The majority is in gross error when they state the following:

> "The Carrier has established by conclusive evidence that it does not possess the mechanical facilities or the personnel to do this kind of work in its own shop and that the work of the character here involved has been contracted out for many years, with the knowledge, if not the acquiescence, of the complaining organization. The situation thus disclosed casts upon the organization the burden of proof."

Such a statement can only indicate that the majority has failed to review the record in its entirety or have disregarded their own statement of facts in their submission to this Division.

On Page 4 of their submission it is stated in pertinent part:

> "In the machine side of our locomotive shop we have two lathes capable of turning and cutting armature commutators. * * * On these lathes, where tolerances allow, commutators can be cut down and polished. * * * We only have one Machinist, Mr. Ryan, who operates these lathes, and he is under the jurisdiction of the Machine Shop Foreman and not the Electric Shop Foreman. Mr. Ryan's primary and basic work load consists of turning axles and wheels.

Turning and/or grinding armature commutators is only an ancillary and incidental part of his work load or duties."

The Employes not only presented sufficient proof of past practice and agreement rules, but the Carrier substantiates such practice by the above statement.

The Majority further states:

"A full and careful review of the evidence properly before us leads to the unescapable conclusion that the Organization has failed to make out a case. The Carrier was not required to make two jobs out of one by permitting the claimant to do the incidental turning and truing, which he might have been capable of doing, and then contracting out the major tasks which could not be performed on the property."

There is nothing in the record or the agreement to differentiate between a major or minor task and further, the conflicting statements on the part of the Carrier to the effect that they do not possess mechanical facilities has led the majority to render such an aborted conclusion.

The Carrier's own record reveals:

"Our facilities and personnel qualifications do not permit vapor degreasing, vacuum drying and vacuum epoxy impregnation."

and then they place further argument, on Page 5 of their submission, in which they admit they have the employes and the facilities for degreasing armatures and so forth by the following statement:

"Further note that we never have received any claim from our Machinist Helpers who operate our vapor degreasor account not being permitted to vapor degrease armatures."

Such contradictory statements can hardly or realistically be termed as conclusive evidence. They further state:

"What we have said is not to be construed as in any way relaxing the right of employes to perform the function guaranteed them by Rules 30 and 54 of the effective Agreement; nor would we be understood as extending the carrier's managerial prerogative to contract work out."

Here the majority recognizes all the rights of the Organization and the claimants to the work in dispute and yet they absurdly and facetiously grant this right to the Carrier in the same breath.

It is obvious by their concluding statements that this award should be sustained and therefore, we are compelled to dissent.

R. E. Stenzinger

E. J. McDermott

C. E. Bagwell

T. E. Losey

James B. Zink