Award No. 4772
Docket No. 4629
2-LI-CM-'65

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. 156, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, particularly Rule No. 79 and no contracting of work agreement and penalty November 9, 1962 agreement, the carrier improperly denied the following named employes of the carmen's craft the right to perform work covered by agreement with the carrier. They are: Ken Vogel, John Scheick, Walter Petzolt, John Pikul, G. Murman, E. Musante.

2. That accordingly, the Carrier be ordered to compensate each of the aforementioned employes eight (8) hours each at the punitive rate.

EMPLOYES' STATEMENT OF FACTS: The employes named above in Part 1 of the Employes' claim hereinafter referred to as the claimants, are employed by the Long Island Railroad Company, hereinafter referred to as the carrier, in the craft of carmen.

Carrier hired Eastern Flooring Company of 46 East 29th Street, New York City, to apply carpets and mats, cutting and placing of same in carrier's cars, Cayuga and Aquebogue around March 28 and April 4, 1963.

Three employes of Eastern worked two (2) days, eight (8) hours each day on these two cars.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The Agreement effective July 1, 1949 as subsequently amended is controlling.

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 Employees' position is that the laying of carpets is included within their work of "maintaining * * * passenger * * * cars," within the meaning of Rule 79. It is work reasonably included in maintaining passenger cars for use; there is no indication that it has ever been done by other employes than carmen; and while the Carrier maintains that this work has not heretofore been performed upon parlor lounge cars, because it had none, it concedes that carmen have in the past done this work on other passenger cars.

It is true that the Agreement does not give the Employees any control over the Carrier's right to purchase carpeting wherever it may choose. On the other hand, the Carrier should not, without some substantial reason, choose to make its purchases in such a way as to curtail the Employees' established right to this work. There is no indication that this particular carpeting, out of the many kinds, makes and brands available, is of such unique character or quality as either to make essential or especially important, or actually to necessitate its installation on the property by only the manufacturer's work force.

However, the controlling feature in this case is the agreement and interpretation of November 9, 1962, whereby

> "It is understood that the Carrier would be subject to penalty if work normally and customarily performed by employees represented by System Federation No. 156 is contracted out without the concurrence of the General Chairman or General Chairmen involved."

The Carrier's failure to seek that concurrence was presumably due to the belief that this particular work did not come within the special agreement; but under the record we must hold that agreement applicable.

AWARD

Claim sustained, but at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1965.

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