Award No. 4773
Docket No. 4640
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: C. F. Steele, N. E. Brewster, Sr., P. J. Balnis, C. Winant, E. P. Whalen, J. A. Bayer, J. Buckwald, G. Crisci, Stanley Ober, W. H. Prince, J. A. Giordano, P. Dooley, J. Connelly, F. Krasevec, Sr., J. Diggs and H. Whitaker.

2. That accordingly, the Carrier be ordered to compensate each of the aforenamed employes eight (8) hours each at the punitive rate, for each day starting February 11, 1963 (exclusive of Saturday and Sunday) on a continuous basis.

EMPLOYES' STATEMENT OF FACTS: The employes named above in part one 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, New York. Carrier hired outside concern to arrange and make complete set of slip covers for seat and cushions of parlor 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.

In conclusion, the carrier desires to reiterate the following:

1 – It is a managerial prerogative to use sound judgment and purchase stock items, including slip covers, in the open market without violating the classification of work rule.

2 – The agreement of November 9, 1962, did not contemplate that the carrier was barred from purchasing manufactured items. Therefore, that agreement was not violated.

3 – The carrier has the right to determine the most economical means to operate its business.

4 – Denial of claim is supported by Award Nos. 3630 and 3767.

For reasons set forth herein, the claim is without merit and should, therefore, 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 waived right of appearance at hearing thereon.

The basis of the claim is that "Carrier hired outside concern to arrange and make complete set of slip covers for seat and cushions of parlor cars."

The Employes state that they "have the experience and skill to perform the work in question." But certainly the making of slip covers is not work of the kind normally included within the clause "maintaining * * * passenger * * * cars," and there is no showing in the record that it has normally and customarily been performed by carmen. Thus it is not within the controlling Agreement or the special agreement and interpretation of November 9, 1962.

AWARD

Claim denied.

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.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4773

The majority in stating that "the making of slip covers is not work normally included within the clause 'maintaining * * * passenger * * * cars,' ignores that part of maintaining defined in Rule 79 as 'upholstering.'" It is a well known fact that the making of slip covers is upholstering. Furthermore the work was contracted out by the carrier without the concurrence of the General Chairman as required by the Special Agreement and interpretation thereof dated November 9, 1962.

For the above reasons we must dissent.

E. J. McDermott
C. E. Bagwell
T. E. Losey
R. E. Stenzinger
James B. Zink

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