Award No. 4774
Docket No. 4641
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 J. Connelly, P. Balnis, M. E. Brewster, C. Winant, J. Buckwald, C. F. Steele, H. Whitaker, Moses May, J. Diggs, G. Crisci, F. Krasevec and P. J. Dooley.

2. That accordingly, the Carrier be ordered to compensate each of the aforenamed employes four (4) hours each at the punitive rate, for each day starting July 1, 1963 (exclusive of Saturday and Sunday) on a continuous basis until case is settled.

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 purchased cloth bags from Maybeck Upholsters of Richmond Hill, New York, an outside concern. In the past, and only about three (3) weeks before purchase by carrier, we were still making these cloth bags in our shops.

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.

POSITION OF EMPLOYES:

RULE NO. 79

"Carmen's work shall consist of building, maintaining, dismantling for repairs (subject to provisions of Rule 81) and inspection of all

discretion it determines such course to be necessary or advisable. It is only when the article purchased comes to rest on the Carrier's property and subject to the carrier's dominion and control that the carmen-upholster's claim under Rule 117 attaches.

The fact that the carrier may possess adequate facilities for making some items in its own shops does not justify an implied prohibition in the classification of work rule against the purchase of similar items in the open market. We conclude, therefore, that the instant claim lacks merit."

The Brotherhood in this claim, as well as other claims that have recently been submitted to this division, is attempting to have your honorable board write a new classification of work rule so that such a rule would encompass work that is not normally or customarily recognized as carmen's work. This division, as well as other divisions of the adjustment board, have consistently held that the board is without authority to write any rule into the agreement.

For example, in Award No. 2491, Referee Carter held as follows:

"It may be as we have indicated that the contract did not contemplate a situation arising such as we have here and for that reason provisions governing such situations were not included. But we cannot supply that which the parties have not put in the agreement. We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employes by the agreement."

There are many awards of this division that have held that the carrier may purchase items in the open market without violating the classification of work rule. The principles applied in these awards are fully applicable here and require a holding that the work which is in issue is not the exclusive property of the employes of the carmen's craft.

In conclusion, the carrier desires to reiterate its position that:

1 – The work in dispute is not work that is normally and customarily performed by employes of the Carmen's craft, or accrues exclusively to that craft.

2 – That the Agreement of November 9, 1962, and Rule 79 have not been violated.

3 – For your Honorable Board to sustain this claim it would have to expand on the provisions of Rule 79 which this Board has admittedly stated that it does not have the authority to do.

4 – Denial of claim is supported by Award Nos. 2491 and 3630.

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.

This claim is that the Carrier denied Claimants the right to perform work covered by the Agreement when it purchased cloth bags to be used by coach cleaners for the deposit of papers and other debris.

The Carrier had previously in one instance had some bags made by employes in its upholstery shop, but such work is not specifically mentioned in Rule 79, is obviously not upholstering, and is not related to "maintaining * * * passenger * * * cars," or to any other indefinite provision of the rule in which it might be considered included by even normal or customary practice. Thus it is clearly 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. 4774

The fact that the carrier had at one time had cloth bags made in its Upholstery Shop is sufficient proof that the carrier considered the work to be work of employes of the Carmen's Craft. The record discloses that the carrier unilaterally decided to purchase the bags in the open market. This was in direct contravention of the Special Agreement and under the interpretation thereof dated November 9, 1962 the carrier was subject to a penalty for contracting out this work without the concurrence of the General Chairman.

Award 4774 fails to apply the agreements and interpretation; therefore, we must dissent.

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