Award No. 4775
Docket No. 4642
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: William Beyer, Glen E. Brown, Jr., J. Gryn, Jr., F. Bodt, Jr., Gene A. Miller, M. P. Martone, C. F. Smalkowski and A. J. Russo.

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 April 24, 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 side and roof section for car No. 2927 from an outside concern. In the past and at time of claim we were still doing this work, in our shops on Car No. 2644. 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

In the instant dispute, the carrier exercised its managerial function to purchase prefabricated roofs and sides from the Pullman Company, which is not in violation of Rule 79 nor the November 9, 1962 agreement.

This Division has denied claims identical in principle to the instant claim. For example, Award No. 1990 covers an exactly similar case, and Referee H. A. Johnson held that:

> "The contract does not abridge the carrier's right to make purchases in the manner in which was done here.
>
> The work of assembling, when the fabricated parts were purchased and delivered unassembled, was clearly the work of these employes. In other words, the work is properly theirs if such exists in connection with carrier's equipment.
>
> Before the time the fabricated parts were assembled the purchase order requirements had not been met with fully and the sides, under those conditions, had not yet become the property of the carrier."

The denial of the instant claim is supported by Award No. 1990 alone.

The carrier does not wish to burden your honorable board by citing many awards of this division that have upheld the principle that the contract is not violated when the carrier purchases prefabricated or stock items in the open market, but we wish to stress that many such awards support the carrier's position in this dispute.

In conclusion, the carrier desires to reiterate the following:

1 – It is the managerial prerogative to purchase stock items, prefabricated items, etc., 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 or prefabricated items in the open market.

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

4 – Denial of claim is clearly supported by Award Nos. 1990 and 3767.

The claim as made herein is without merit and should 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 claim is that the Carrier denied Claimants the right to perform work covered by the Agreement when it "purchased side and roof section for car No. 2927 from an outside concern."

The car had been purchased from the Pullman Standard Car Manufacturing Company, which also makes replacement parts for such cars including side and roof sections. The car having been damaged, side and roof sections were purchased from the manufacturer and installed by the Employes. But it is contended that since, under Rule 79, car repairing is the work of carmen, this constituted contracting out the repair work.

The Carrier's business is transportation, not manufacturing, and the Agreement relates to that business. It is the obligation of management to operate that business efficiently and economically in its discretion, and that discretion is subject only to such restraints as are made by law or by agreement. Rule 79 cannot be construed as restraining the manner in which car repair work shall be done, or as requiring the Carrier to start with basic materials and manufacture parts which are commercially available, or to buy the smallest possible parts and assemble them. The fact that some repairs are done with basic materials or smallest parts cannot operate to confine all repairs to those methods; and the fact that the Carrier has facilities and its employes the ability to make repair parts does not justify an implied prohibition in Rule 79 against their purchase for installation by Employes. Award No. 3630.

The record discloses no violation of the controlling Agreement or of the 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. 4775

The carrier is committed to its employes regarding jurisdiction over work and the work may not be unilaterally removed from the coverage of the agreement as was done in the instant case. To do so was in violation of Rule 79 as well as the Special Agreement and interpretation of November 9, 1962. The carrier concedes that employes in the carmen's craft have the right to perform fabricating, nor is there any exception in Rule 79 authorizing the carrier to purchase prefabricated material or parts in the open market.

The Board is expected to see that there is compliance with the existing agreements; since this was not done in Award 4775 we must dissent.

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