Award No. 4776
Docket No. 4650
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, 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, C. F. Steele, C. Winant, J. Buchwald, J. Diggs, F. Krasevec, G. Grisci, P. J. Balnis, J. Skolnick, P. Dooley, M. Ray and H. Whitaker.

2. That accordingly, the carrier be ordered to compensate each of the aforenamed employes by eight hours at the punitive rate for each day starting October 10, 1963. (Exclusive of Saturday and Sunday.) This is a continuous claim.

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 plastic slip covers, plastic arm rests, plastic cushion covers, from an outside concern. Claimants had to add pieces to make covers fit properly, make new arm rests. We could have done complete job better and cheaper.

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

statutory obligation, as well as competitive necessity, to operate its business with all possible economy and efficiency."

We also direct your particular attention to Award No. 3630, Referee James P. Carey, Jr., in which this Board stated in part:

> "We think the carmen's Classification of Work Rule is not open to the implication that because upholstering of passenger and freight cars in shops and yards is specifically declared to be carmen's work, that the employer is thereby precluded from purchasing upholstered articles for use in the open market, if in the exercise of sound business 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-upholsterer's claim under Rule 117 attaches. Analogous situations are to be found in the purchase of other manufactured items which historically have been accepted as properly within the domain of the Carrier's managerial discretion. For example, the Classification of Work Rule defines carmen's work, among other things, as building all passenger and freight cars. It has consistently been recognized that such language does not prohibit the Carrier in its exercise of sound business judgment from having such cars made by independent manufacturers. 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 carrier contends that, based on the foregoing decisions, as well as many that have not been cited in this submission, there can be no doubt that the collectively-bargained agreement does not prohibit the carrier from purchasing articles in the open market.

We would also direct your honorable board's attention to the fact that the organization's original claim dated November 25, 1963, pertains to the purchase of slip covers and arm rests covers for one car, 8509. It is not conceivable how the organization can, by any stretch of the imagination, consider this to be a continuous claim or apply to any other car than 8509 which was specifically mentioned.

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 plastic slip covers, arm rests and cushion covers from an outside concern for Car 8509.

There is no showing that this work has ever been done by the Claimants; it 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. 4776

We disagree with the finding of the majority that the instant work "is obviously not upholstering." It is not only a well known fact that the making of plastic slip covers, plastic arm rests and plastic cushion covers is upholstering but that it is recognized as being part of carmen's work is borne out by the fact that the record discloses that after the work had been performed by other than employes subject to the controlling agreement it was necessary for the claimants to make changes by adding pieces to make the covers fit properly and also to make new arm rests. Thus the work was clearly within the controlling agreement and contracting it out was not only in violation thereof but was also in violation of the Special Agreement and interpretation of November 9, 1962.

Upholding the carrier in circumvention of the applicable rules requires a dissent.

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

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