Award No. 5019
Docket No. 4852
2-P&LE-TWUOA-'67

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:

TRANSPORT WORKERS UNION OF AMERICA, RAILROAD DIVISION, A. F. of L.-C. I. O.

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Local 1427 Transport Workers Union of America, AFL-CIO, hereby makes protest of the Pittsburgh and Lake Erie Railroads contracting out to outside concerns the building of 50 Insulated Box Cars to the DSI Inc., and 150 Flat Cars to the Greenville, Pa. Car Company.

The Union demands that the Company cease and desist from contracting out the building of cars, which is in complete violation of the Scope Rule and Work Classification Rule of Carman. During conference between the Union and Company on May 15, 1964 the Company advised the Union that it contracted out to the DSI Inc., and Greenville, Pa. Car Company to build 50 Box Cars and 150 Flat Cars.

EMPLOYES' STATEMENT OF FACTS: The parties amended the agreement on June 1, 1963 to provide for a scope rule which the Union asserts prohibits the carrier from contracting out to outside concerns the building of cars.

The carrier advised the union during the conference on May 15, 1964 that they have contracted out to DSI Inc. of Buffalo, New York and the Greenville, Pa. Car Company to build fifty (50) box cars and one hundred and fifty (150) flat cars.

The employes first learned of the carrier's intention to contract out the building of new cars by a press release which appeared in the Pittsburgh, Pa. Press dated January 7, 1964 in which the president of the Pittsburgh and Lake Erie Railroad Company announced that the carrier planned to contract out work of building new cars and would soon ask car building concerns to submit bids on 650 new freight cars.

The organization wired the carrier on January 14, 1964 that the carrier would be in violation of the agreement if their plans were carried out to contract out the work of building new cars.

The carrier and the organization met on January 27, 1964 and subsequent dates on the issue of contracting out work, the National Railroad Mediation

announced various exceptions to the literal wording of scope and classification of work rules. One is when Carrier does not have the equipment necessary to perform the work and the amount of work to be done does not justify its purchase. Another is when special skills are involved which the employes do not ordinarily possess. In determining whether these exceptions exist, the judgment of carrier's managerial officers must be given consideration as they are charged with the economical, efficient and safe operation of the railroad. The Carrier must show valid reasons for its actions in farming out work but the burden of proof rests on the claimant to prove that a violation of the agreement occurred.

* * * * *

In connection with the above findings we desire to point out that **in the making of a collective agreement** with the Electrical Workers **it was not contemplated that carrier would thereby be restrained in the general management of its business in the ordinary manner. The agreement was intended as a classification of work among the various crafts and not an extension of the existing scope of work into fields not theretofore contemplated. It is only when the carrier pursues an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform that a basis for claim exists.** We think the rebuilding and modernizing of old traction motors with the accompanying warranties, under the circumstances set forth herein and under the findings made, are not in violation of the classification of work rule of the Electricians' Agreement. (Emphasis ours.)

Claim denied."

CONCLUSION: Carrier has shown that the carmen's agreement does not confine the building of freight cars to this property and does not prohibit or restrict the carrier from contracting for the purchase of such equipment. In this respect, carrier's position is supported by Award No. 3630 and others of this division.

The carmen have failed to furnish the necessary evidence to sustain the burden of proving their case and carrier respectfully submits, therefore, that the claim 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 were given due notice of hearing thereon.

The claim is "that the Company cease and desist from contracting out the building of cars, which is in complete violation of the Scope Rule and Work Classification Rule of Carmen".

In their submission, the Employes say:

"A long history of the Car Shop operation at McKees Rocks, Pa., in the heart of the steel producing industry reveals that the present facility was used from time to time over the years to build new cars for the Carrier as well as for other rail carriers in this country."

The Carrier denies this, and says:

"Carrier's Steel Car Repair Shop at McKees Rocks, Pa., the only car repair facility on the property equipped to make heavy repairs to freight cars, was built in 1906 and has never been used for building or manufacturing freight cars. This shop was not intended to be, was not equipped to be, when constructed, and is not now equipped as a facility for the building or manufacturing of freight cars. To so equip it would be neither practical nor economically feasible. Further, Carrier's records do not indicate that freight cars were ever built in this shop or anywhere on Carrier's property. Carrier's records do indicate, however, that in 1951 ten steel caboose cars, custom made so to speak, were built in the steel car shop at McKees Rocks. Following that venture into the manufacturing field, Carrier elected to purchase additional steel cabooses, as required, as the experience gained in 1951 satisfied the Carrier it was neither practical nor economically feasible to build cars at its facilities.

* * * * *

Throughout the years that Carrier's car repair facility at McKees Rocks has been in exisence, Carrier has always contracted for the purchase of new freight and passenger cars from outside manufacturers, without complaint or protest from the Carmen's Organization.

* * * * *

* * * aside from the building of ten custom made caboose cars in 1951, no freight cars whatsoever were built by this Carrier from 1906 when the car shop was built and commenced operation until the present time".

Even if the above statement of the Employes were not disputed, it would not amount to a contention that the Carrier had never purchased freight cars, or that all freight cars used by it had been built on its property by carmen under the Agreement.

However, upon the news that the Carrier was entering into contract for the purchase of 50 insulated boxcars and 150 flat cars, the Employes' International Representatives telegraphed the Carrier's President, as follows:

"This is to inform you that such action violates the Scope Clause of our June 1, 1963 Agreement which provides carmen will build all cars on the Pittsburgh and Lake Erie Railroad."

Thus the question is whether by the adoption of the Scope Rule in 1963 the Carrier relinquished its right to buy freight cars, or agreed that its carmen should manufacture all such equipment for it.

The Scope Rule is as follows:

"SCOPE

Article I.

Effective June 1, 1963 the provisions hereinafter set forth (including this Scope) shall constitute an Agreement between THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY and THE LAKE ERIE & EASTERN RAILROAD COMPANY and the Employes of said Companies represented by the Labor Organization, party to this Agreement, hereinafter referred to as the TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO, and shall govern the hours of service, rates of pay, and working conditions of such Employes.

ARTICLE II

It is understood that this agreement shall apply to those who perform the work specified in this Agreement on THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY and THE LAKE ERIE & EASTERN RAILROAD COMPANY, except where such work is recognized as belonging to employes not covered by this Agreement or where such work is covered by existing agreements with other organizations.

ARTICLE III.

Qualified employes of the Carmen's Craft shall be used to perform the work specified in the Carmen's Classification of Work rule, except where such work is recognized as belonging to employes not covered by this Agreement or where such work is covered by existing agreements with other organizations."

Article I provides that the contract "shall govern the hours of service, rates of pay, and working conditions" of the carmen, their helpers and apprentices.

Article II provides that "this agreement shall apply to those who perform the work specified in this agreement on the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company".

Article III then provides that "employes of the Carmen's craft shall be used to perform the work specified in the Carmen's Classification of Work rule", with certain exceptions not here relevant.

Thus it is clear that the work which is the subject of the contract is the carmen's work performed on the two railroads named, and not all work described in the Classification of Work rule, wherever performed. It cannot be interpreted as meaning that all such work performed must be performed on these two railroads, or that it must be performed by the Carrier's carmen even if performed elsewhere. Such an interpretation is impossible. Certain repair work on cars of all carriers has always been done, and must be done, wherever the need for it arises. It has never been claimed that a car in need of running repairs while on another line must somehow be brought home for repairs; consequently no such intent can be inferred from the Scope Rule. Yet if the latter means that all freight cars used on those lines must be

manufactured there, it must also mean that all freight cars used on those lines must be repaired there.

There is considerable discussion pro and con, with reference to the parties' intent in the adoption of the Scope Rule. One of the Carrier's representatives is alleged to have said in a discussion that it would require the Carrier to build all new cars in its shops. The Carrier denies that the representative to whom it was attributed was at the meeting in question. Furthermore, there is no showing in the record that during the negotiation any other representative of either party ever referred to the proposed Scope Rule as involving such a commitment, or as requiring the Carrier to manufacture all freight cars used by it.

It is quite possible that some such fear may have been expressed by a carrier representative during the negotiations, but if so, it would not bind the Carrier. On the contrary, there is no claim that any representative of the Employes advanced any such intent, or stated that such was the meaning of the proposal. The record is devoid of any such expression on behalf of the Organization, which made the proposal. Consequently, it would not be reasonable or fair for this Board to conclude that there was a meeting of the minds upon the point, which was not expressed by the proposal nor reasonably inferable from it.

Even in cases of bona fide ambiguity it is inadmissible to adopt a construction which neither party is shown to have intended, asserted or proposed to the other. The adoption of the Scope Rule was to provide that the carmen were entitled to carmen's work performed on the property, and not to provide that all work of the kind must be performed there. The record certainly contains no showing that the parties intended to turn the Carrier into a manufacturer by requiring that it construct all its freight cars, and the Board cannot construe the Scope Rule as so providing.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1967.

Keenan Printing Co., Chicago, Ill. Printed in U S.A.