Award No. 5040
Docket No. 4735
2-NYC-CM-'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:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

NEW YORK CENTRAL RAILROAD (Western District)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the Controlling Agreement, particularly Rule No. 154, when they contracted out Carmen's work of repairing, welding and maintaining Auto Engine Racks, that constitute part of a Special Freight Car Body.

2. That accordingly the Carrier shall be ordered to restore the Carmen's work now being performed by the Van Dalen Manufacturing Company, Brookpark Road, Cleveland, Ohio, to the Carmen, New York Central Railroad, Cleveland, Ohio.

3. That accordingly the Carrier shall be ordered to compensate twenty-five (25) Senior Furloughed carmen at Cleveland, Ohio 8 hours per day, 5 days per week at the prevailing Carmen's rate of pay, from September 15, 1962 until the work is restored to the Carmen's Craft.

4. That the Carrier be ordered to refrain from contracting out Carmen's work in the future.

EMPLOYE'S STATEMENT OF FACTS: For many years the New York Central Railroad maintained mechanical department facilities at Cleveland, Ohio in what was known at Linndale Car Shop and Yards. On December 6, 1954 Linndale Car Shops and Yards were completely closed down, affecting approximately 200 carmen.

Under date of November 30, 1954 a memorandum of agreement was drawn up between System Federation No. 103 and the general mechanical superintendent, Western District, Mr. J. J. Wright and Assistant Chief Mechanical Officer Mr. Kuhn in connecton with the transfer of certain work (repair, welding and maintenance of auto engine racks) in special equipped freight cars. This agreement provided that 39 carmen from the Linndale Car Shops could transfer to West Detroit Car Shops to perform this work.

In the instant case, it was the carrier's judgment that the proper and sensible thing to do was to cooperate with a shipper and other carriers in a plan to get these racks repaired expeditiously so shipments would not be delayed, and to assume that portion of the repair cost of the damage for which they considered this carrier was responsible.

Carrier has previously shown in its statement of facts that the necessity for repair work on these automobile engine racks is determined by the Ford Motor Company after they are unloaded after which, Ford notifies the designated repair company that repairs are necessary. Carrier, threfore, does not has this work to offer to its employees. Your board has recognized that carrier's employees can claim only work which is within carrier's power to offer. For example, see Third Division Awards Nos. 5774(Munro), 8076 (Bailer), 11002 (Boyd) and 12900 (Coburn).

Carrier submits that the foregoing clearly shows that there was no violation of the controlling agreement and the claims cannot be sustained.

CONCLUSION:

The instant claim should be dismissed because it differs from the one handled on the property.

Carrier has clearly shown that no rule of agreement was violated when repairs were made by an outside company to automobile engine racks used by a shipper to protect its product while in transit, particularly when such racks are not a part of freight car. Carrier has also shown herein that the determination of arrangements in distributing repair costs and who is to make repairs is a prerogative of management.

Nothwithstanding of the above-mentioned defect, the claim should be denied for lack of merit.

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 violated the Agreement, and especially Rule 154, the Carmen's Classification of Work Rule, "when they contracted out Carmen's work of repairing, welding and maintaining Auto Engine Racks, that constitute part of a Special Freight Car Body."

Thus the contention is that these racks are integral parts of the cars and that their repair is therefore within Rule 154's work description of "maintaining * * * freight cars." There is considerable discussion of the transfer of work upon the closing of shops, and other collateral matters, but the sole issue is whether these racks are integral parts of the freight cars in which they are used.

The claim must be denied for lack of evidence that the racks involved are integral parts of the cars.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.

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