



Award No. 5187
Docket No. 4998
2-AT&SF-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY - Coast Lines**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the current working Agreement, the Carrier erred when they assigned to a contractor the electrical work caused by the remodeling old Harvey House, Winslow, to be used for this Carrier's Division offices.

2. That accordingly the Carrier be ordered to compensate Electricians O. A. McGhee, L. S. Harris, T. C. Hansen, Carl Newton and H. E. Williams at their regular time and one-half rate of pay for all man-hours worked by this outside electrical contractor on this electrical work at Winslow. This claim effective from the date of August 12, 1963 forward, for any and all electrical work at Winslow.

Job started August 12, 1963, estimated finish, December 1963.

Number of men on job — three (3) and foreman, as of August 12, 1963; five (5) men and foreman, August 26, 1963; and each man working eight (8) hours per day. The Employees' Claim will be for a like number of hours until the job is completed.

EMPLOYEES' STATEMENT OF FACTS: Electricians O. A. McGhee, L. S. Harris, T. C. Hensen, Carl Newton and H. E. Williams, hereinafter referred to as the Claimants, are all monthly rated electricians regularly employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier. As stated, these Claimants are regularly employed in this Carrier's Coast Lines Shop Extension Electrical Department, which is a part of the coast Lines Mechanical Department.

Their primary duties are the installation, construction, repair and maintenance of this Carrier's secondary and primary power, lighting and air conditioning equipment and facilities. Construction work as herein claimed and in dispute.

payment at the time and one-half rate of pay, contrary to the well known and familiarly established principle of this and other Divisions of the National Railroad Adjustment Board that the proper compensation for work not performed is at the pro rata rate.

The Carrier is uninformed as to the arguments the Brotherhood may advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

All that is contained herein has been both known and available to the Employees or their representatives.

Oral hearing is requested.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On August 12, 1963, Carrier embarked on a program to remodel an old hotel at Winslow, Arizona, so that it could be used as a division office building. The project was contracted out because of its magnitude and management's conclusion that its Bridge and Building mechanics and Shop Electricians Department electricians were fully employed at the time.

The work took some seven and one-half months to complete. Floors, walls, ceilings, plumbing and electrical facilities were relocated and, in some instances, replaced; air conditioning, heating and electrical systems were modernized; and the entire structure was repainted. The total contract price for remodeling the building was \$457,407.40 and of that amount, \$45,160.61 represents the cost of the 7233 hours of labor performed by a sub-contractor's force of seven full-time electrical workers and their foreman and job superintendent in connection with the required electrical work.

Petitioner maintains that Carrier's own electricians should have been assigned that electrical work. There is no question in this case but that work belonging within the scope of the applicable collective bargaining agreement was given to an outside contractor. It is equally clear that it ordinarily would constitute a flagrant violation for a carrier to use employees who are not covered by an agreement to perform duties coming within its terms.

On the other hand, not all such transactions are proscribed by this Board. For example, it has established in a host of awards that a Carrier is not required to split up work so as to retain a minor part for performance by its employees where the whole project is such as to warrant management,

in the reasonable exercise of its judgment, to contract the work. Second Division Awards 2186, 3278, 3433, 3559, 4019 and 4091 as well as Third Division Awards 3206, 4965, 5304, 5563 and 7841. Whether or not a violation exists in such situations must depend on the specific factual situation.

The record indicates that it was operationally desirable to farm out the entire remodeling project. There is no evidence that Carrier has acted in bad faith, sought to circumvent the applicable agreement or denied any reasonable request by Petitioner for information concerning the transaction. There is no proof that negates Carrier's point that had it used its own electricians, other important work would have been delayed. Unlike the situation in Award 3457, it has not been established that Carrier's staff of employees was sufficiently large to perform the work in question in addition to their regular duties.

That Carrier's electricians were all employed full time when the work was given to the outside contractor is some evidence of management's good faith. While some employees were laid off at San Bernardino, about ten hours drive from Winslow, on September 13, 1963, one month after the remodeling contract had been let out, there is no indication that they applied for work at Winslow. It does not appear from evidence presented during discussion of this grievance on the property that apprentices were available to do the work.

On the basis of this record, we are not satisfied that any sound purpose would be served in setting aside a transaction that appears to be equitable and of practical value, and that it would have been feasible to sever the electrical portion from the remainder of the remodeling project.

In the light of the specific facts of this case, we will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1967.