Award No. 5203
Docket No. 4903
2-NYC-SM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

THE NEW YORK CENTRAL RAILROAD (Western District)

DISPUTE: CLAIM OF EMPLOYES:

That the Carrier violated the provisions of the controlling agreements and specifically Rules 32 and 126 and the Memorandum of Agreement dated November 18, 1959, when on or about November 6th of 1963 the Carrier arbitrarily contracted to the Reliance Plumbing and Heating Company, the pipework and hose work in connection with the installation of the new fueling and sanding station adjacent to the Collingwood Diesel and Locomotive Terminal, Cleveland, Ohio.

That accordingly, Carrier be ordered to compensate each of the following Sheet Metal Workers, who work in the Maintenance of Facility Force and whose names appear on the Collinwood Cleveland roster, in the amount of ninety-nine (99) hours' pay each at the straight time rate:

T. Havens
C. Graham
J. Carroll
J. Smolic
S. Dombos
G. Kaberline
G. Schafer
D. Zaller
J. Conley
F. Schmidt
E. Hood
G. Link
N. Radziewicz
D. Marrapodi
P. Nix
J. Bowles
M. Comola
J. Sustersic
J. Dulik
C. Muetzel
R. Nesbeth
O. Branthoover
J. Jeffries
G. Weining
J. Boyle
E. Jablonski
R. Toman
R. Bowins
M. Barrier

EMPLOYES' STATEMENT OF FACTS: On or about November 6, 1963 work was started at the new fueling and sanding station adjacent to the Collinwood Diesel Terminal at Cleveland, Ohio, as a result of the Carrier arbitrarily contracting out the work involved to the Reliance Plumbing and Heating Company.

The construction of this facility required the fabrication and installation of a large amount of sand, water, air and oil, piping and hoses. The pipe and hose installed in this facility was from ½ inch to 6 inch in pipe and hose sizes.

From on or about November 6, 1963 to on or about January 9, 1964, pipefitters and welders employed by the Reliance Plumbing and Heating Company, worked a total of approximately 2,871 hours performing pipe work, welding work and hose work in the construction of this facility.

The Reliance Plumbing, Heating, Air-Conditioning, Power and Process Piping Company, are located at 4975 Hamilton Avenue, Cleveland, Ohio.

The piping and hose work which was contracted out to the above referred to construction company was a part of the system for supplying sand, water, oil, fuel and air for diesel locomotives.

All the pipe work and hose work at the DeWitt Fueling and Sanding Station was fabricated and installed by Sheet Metal Workers employed by the New York Central System. We call to your attention that these facilities are identical in construction, as shown in a letter dated July 23, 1963 (Exhbit 4, Sheet 1), File 13.5, addressed to Messrs. C. F. Connell, General Chairman Sheet Metal Workers, J. A. Morrison, General Chairman Electrical Workers, M. J. Biance, General Chairman Boilermakers and O. E. Stork, General Chairman Machinists, from Mechanical Superintendent R. W. Mustard.

We quote from this letter:

> "While these plans were prepared for use at DeWitt, an identical facility will be constructed at Collinwood."

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including Carrier's highest designated officer; all of whom have declined to make satisfactory adjustment.

The agreement effective July 16, 1946 with revisions to July 1, 1951 as subsequently amended is controlling.

POSITION OF EMPLOYES: The Carrier's arbitrary contracting of the pipe work and the hose work in connection with the sanding and fueling facility at Collinwood, Ohio was a direct violation of the provisions of the current agreement effective July 16, 1946, with revisions to July 1, 1951, specifically Rule 32 which is the assignment of work rule of this agreement, and Rule 126 which is the classification of work for Sheet Metal Workers, and the Memorandum of Agreement dated November 18, 1959.

Rule 32 (Assignment of Work) paragraph (a) quoted in part:

> "(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, . . ."

struction, therefore making it impractical to split up the work between the contractor and carrier's employes.

2. The Claimants were regularly employed full-time and did not suffer any monetary loss during the time the Reliance Plumbing and Heating Company performed work at the fueling station.

Carrier submits that the Employes' claim is without merit and respectfully requests this Board to deny it in its entirety.

All facts and arguments presented herein have been made known to the Employes either orally or by correspondence in the handling of the claim on the property.

An oral hearing is requested unless after reviewing Employes' Submission, Carrier decides to waive hearing.

(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 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.

Work was contracted out by the Company to a general contractor who in turn sub-contracted the work out to other contractors.

All the Sheet Metal Workers in the maintenance forces at Collinwood were fully occupied. The work to be done by the Company could not be deferred or postponed so an outside Contractor was hired as the work had to be done in short order.

The work was started about Nov. 6, 1963 at Collinwood Diesel Terminal at Cleveland, Ohio and ended about Jan. 9, 1964.

The work consisted of performing pipe work, welding work and hose work. The work could be done by the Sheet Metal Workers but they were doing the work assigned by the Company on another job. The work was done by the Contractor efficiently and economically, and done on time.

No rules were violated nor was the agreement violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD 5203

The Referee and Carrier members of this Division constituted the majority to this instant award. We contend that they are in error in their findings when they state in pertinent part:

> "The work to be done by the Company could not have been deferred or postponed, so an outside contractor was hired **as the work had to be done in short order.**" (Emphasis ours.)

There is no showing in the record as a whole that the work contracted out, and which gave rise to this dispute, was of an emergency nature or "had to be done in short order."

The Referee further stated:

> "The work consisted of performing pipe work, welding work and hose work. The work could be done by Sheet Metal Workers, but they were doing work assigned by the Company on another job."

Such casual comment indicates either a biased view or a complete lack of comprehension of the record, which included the Agreement Rules:

"RULE 32.

ASSIGNMENT OF WORK

(Paragraph A) . . . None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rule of each craft."

"RULE 126.

CLASSIFICATION OF WORK FOR SHEET METAL WORKERS

Sheet Metal Workers work shall consist of tinning, coppersmithing and **pipefitting in shops, yards, buildings, . . . bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes.**" (Emphasis ours.)

The Memorandum of Agreement dated November 18, 1959, fortifies the foregoing contractual rights; and we quote in pertinent part from this Memorandum:

> "The practice will continue of notifying the Sheet Metal Workers General Chairman and getting his concurrence before projects in Subdivision 40 and 41, seniority district, Sheet Metal Workers Maintenance gangs jurisdiction, are contracted to outside concern."

Further, it appears that the Referee completely ignored or refused to take cognizance of two very recent awards of this Division, Awards No. 5034 and 5035. These dealt with the same subject matter on the same Carrier property and similar langauge of a Memorandum of Agreement covering the Electrical Worker craft.

The Referee sitting with this Division when making Awards 5034 and 5035 dealt squarely with the facts and language construction of the basic Shop Craft Agreement, when the Division stated among other things in these two awards:

> "The difficulty with Carrier's position is its Memorandum of Agreement of September 15, 1960, with the Electrical Workers. In that Agreement, Carrier expressly committed itself to continue the practice 'of notifying the Electrical Workers General Chairman and getting his concurrence before projects in the aforementioned Electrical Workers gangs jurisdiction, are contracted to outside concerns.' **Mere notification does not satisfy that commitment.** There must be something more; specifically, concurrence by the General Chairman. This requirement is definite and unequivocal, and there is no basis in the rules or record for setting it aside. We are bound by the language used by the parties to express their agreement, and must give that language its normal and undistorted significance **even when it is tempting to do otherwise.**
>
> Carriers contend that paragraph 3, the compensation portion of the claim, must be nevertheless denied since all claimants were working and fully occupied during the claim period, and sustain no pecuniary loss or damage. While the awards are sharply divided in point, it is our opinion that, in general, compensation should be awarded in cases of the present type not as a penalty, but in accordance with the terms of a collective bargaining agreement that has been clearly breached. See among many others, Awards 4489, 4322, 1802, and 1269. If the contrary were true, an Agreement could be violated with impunity and might possess little practical meaning, a factor that could well mitigate against the desired stability in Labor-Management relations." (Emphasis ours.)

The same issues, principles and doctrines which were considered in the aforementioned awards, hold just as true here. They should not have been ignored, but should have been considered to have sufficient authority and force to have warranted an affirmative award in this instant case.

Further, the Referee seized upon a void and baseless conclusion when he stated in pertinent part:

> "The work was done by the Contractor efficiently and economically, and done on time."

This conclusion could not have been extracted from the record. Therefore, it is reasonable to contend that it was not based on any species of proof or probative matter and clearly reflects the cavalieric attitude towards the seriousness of the basic contractual rights of the claimants in this instant case.

There is no excuse for the mistakes and errors here as the two previously cited awards were made known by citation in panel discussion and copies of same were furnished to the Referee and Carrier member. The obvious similarity of this case with Awards 5034 and 5035 made these prior awards germane to this issue. Yet, the findings of this Award are sterile and void

of any indication that they were considered at all, as well as the absence of consideration for the contract agreement itself.

We contend that such a diametric ruling on the same question is repugnant to the petitioner, as well as the principle of precedent. The very dignity of due process of 3 First (i) of the Railway Labor Act is in danger. Thus, it follows that the majority was in absolute error in their concluding statement to this Award when they stated:

"No rules were violated nor was the agreement violated."

Such irrelevant and baseless conclusion is not supported by the facts in this instant case and certainly projects an injustice to the claimant, who is compelled under the Railway Labor Act to subject his disputes and grievances to the National Railroad Adjustment Board, Second Division.

We are compelled to a vigorous dissent.

R. E. Stenzinger
E. J. McDermott
C. E. Bagwell
O. L. Wertz
D. S. Anderson

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