



Award No. 5210
Docket No. 5021
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:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO**

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

DISPUTE: CLAIM OF EMPLOYEES:

Since the Company is contracting out the building of new freight cars and men were furloughed, the Organization is asking that the following men be paid eight (8) hours at the carmen's rate of pay for each working day since furloughed.

This claim to continue as long as men are furloughed and company continues violating the Scope Rule by contracting out the building of new freight cars.

Freight Car Repairmen, last worked January 4, 1965.

E. C. Miller	R. P. Taylor
G. A. Fazzone	M. A. Shupe
J. W. Loyd	A. Hamilton
J. Koocsis	J. Sabo
E. Secko, Jr.	W. T. Rush
E. Barczyk	J. W. Hamilton
R. R. Haas	W. J. Porter
J. J. Smith	G. W. Bossar
M. M. Bielock	S. Pepitske
M. Sunderland	J. Lorinc
W. H. Cook	H. R. Zest
A. Baysure	J. P. Sawsak
J. J. Tushan	P. P. Ostoffie
A. S. Romano	C. R. Newring, Jr.
	C. M. Tushan

Electric Welders, last day worked, January 4, 1965.

J. J. Perry	B. T. Schrey
J. P. Malovich	A. Brown
M. J. Witkowski	J. J. Secko
A. H. Pollock	E. J. Zitconitch
G. W. Metz	R. R. Logue
B. S. Kovach (18876)	J. Bonitate
R. J. Carroll	N. Patrick
T. P. DeCarpio	F. W. Mannas (Last day
E. E. Grandillo	worked Jan. 5, 1965)

The following named freight car repairmen, last day worked Jan. 15, 1965.

M. Manzola	J. Radzik
J. Lang	J. Vulin
G. T. Doty	N. Narrone
J. Pysnak	F. Figura
L. L. Williams	C. R. Little
E. Brandstadter	W. Seal

Since the Company did not fulfill their obligation, by giving me the entire furloughed list and also "Report of Changes in the status of Car Department Employees as shown on B. P. 102 Form.", the omitted names should also be included from the date they were furloughed. (18876)

EMPLOYEES' STATEMENT OF FACTS: Carrier contracted out work of building cars to an outside concern and then furloughed Carmen listed in the Claim and also others not listed in the Claim. Union contends that Carrier violated the Agreement between the Parties which prohibits the Carrier from contracting out work of Building of Cars.

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 employees 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.

of such devices. The Employees performed all the work necessary in installation and wiring of the equipment involved here after its purchase from the manufacturer.' (Emphasis ours.)

This principle was affirmed in Awards 5044, 11438, 13703 and others.

* * * * *

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. Carrier's position is supported by awards of the Second and Third Divisions of the National Railroad Adjustment Board.

Carrier has also shown that the employees have failed to furnish the necessary evidence to sustain the burden of proving their case and Carrier respectfully submits, therefore, that the claim is without merit and requests that same be denied.

All data incorporated herein have been made known or available to the Organization during conference or otherwise.

Oral hearing is desired.

(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 employees 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.

This claim involves the same incident as that in Docket No. 4852, which was disposed of by Award No. 5019, namely, the Carrier's purchase from or contracting out to manufacturing concerns on May 15, 1964, the building of 50 boxcars and 150 flatcars. The remedy sought in the former case was that the Company cease and desist from such contracts as "in complete violation of the Scope Rule and Work Classification Rule of Carmen." In that award, this Division found upon the record that traditionally the Carrier had never been the manufacturer of all, or substantially all, of such cars used by it, and that in the new rules it was not asked and did not agree to become so.

On February 16, 1965, the day before that claim was brought to this Division, the present claim was presented to the Carrier on behalf of the Claimants, alleging that the same incident had resulted in their furloughs. The Employees' submission states:

"The Employees assert that the Carrier violated the agreement when the Carrier contracted out the work of building cars on May 15, 1963, and then furloughed the employees listed in the claim on January 5, 1965."

This claim clearly relates to the same incident as that disposed of by Awards No. 5019, namely, the car purchases of May 15, 1963. Thus the claim has been split into two, the correctness of the first award is attacked and the Board is asked to reverse its decision. It is clear that a claim cannot thus be split and presented for a second award. See First Division Awards Nos. 7459, 13178, 143307, 15257, 16755, 16876 and 20453, the first and sixth thereof without referees. Although this objection does not appear to have been made on the property, the Railway Labor Act makes the awards of this Board final, and does not authorize it to reverse itself as to any claimed violation; while it may upon a similar claim of violation perhaps reach a contrary conclusion, it is not authorized to reverse itself as to the claimed violation of May 15, 1963, which it has finally determined by its Award No. 5019.

In any event such reexamination would not be warranted by the record before us. As noted above, the employees contend that the Carrier's car purchases of May 15, 1963 resulted in Claimants' furloughs in January, 1965. But the Carrier's submission includes this statement, which the Employees do not deny:

"The claimants involved in the instant dispute were hired by the Carrier between the months of June and December, 1964."

Not having been employees of the Carrier on May 15, 1963, they were obviously not affected by its actions of that date and cannot complain of them. Moreover, those car purchases did not prevent the Claimants' employment by the carrier in 1964, and obviously did not cause their furloughs in 1965. Therefore, even if this Board had the authority to reconsider its award No. 5019 concerning the propriety of the car purchases of May 15, 1963, it could not sustain the claim that those purchases resulted in Claimants' furloughs in 1965, so as to entitle them to any compensation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.