

Award No. 5369

Docket No. 5233

2-SP(PL)-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That on July 17, 1965, at Roseville, California, the Carrier violated the controlling agreement, particularly Rules 31, 33(a) and 96 thereof, when they allowed employes of an outside firm identified as Drauss Muffei, of Muchew, Germany, to perform electrical work which, by contractual right, belongs to employes covered in the scope of the negotiated agreement hereinafter referred to.

2. That accordingly, the Carrier be ordered to pay Electricians L. T. Upper, W. N. Matheson, P. B. Regalado and F. Shaw eight (8) hours' additional compensation at the time and one-half rate for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Electricians L. T. Upper, W. N. Matheson, P. B. Regalado and F. Shaw, hereinafter referred to as claimants, are regularly employed as electricians by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the Carrier, at the Roseville Diesel Terminal, including Service Track, at Roseville, California.

On July 17, 1965, the Carrier allowed the following individuals employed by Krauss Muffei Company, Muchew, Germany, Mr. Willie Dausses, Mr. Paul Muth, Mr. Otto Aevele, Mr. Otto Bumpgarner, to perform electrical work on Diesel Locomotive No. 9014 and Caboose No. 1361 at Carrier's Roseville Diesel Terminal (Service Track), Roseville, California. The electrical work in question consisted of installing a Humphery Otentio-meter, Displacement Transducer, Bridge Balance, Kintel Amplifier, Power Supply and various other recording devices. In addition, the above named employes of this outside firm assisted in connecting a control wiring harness between Diesel Locomotive No. 9014 and Caboose No. 1361.

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.

This case was submitted on the following set of facts:

Carrier had purchased several diesel-hydraulic locomotives built by the Krauss Maffei and Maybach firms of Germany. These locomotives are referred to as KM diesel locomotives. The KM locomotives differ from the diesel-electric locomotives in the method of furnishing power to the driving wheels. Carrier had experienced certain operational and mechanical problems with the KM units. The Krauss Maffei and Maybach firms sent four of their engineers or technicians from Germany to Roseville, California, to conduct dynamic tests under actual operating conditions. Most of the test equipment was supplied by the Krauss Maffei and Maybach firms. These four German engineers or technicians worked eight hours each on July 17, 1965, at Carrier's Roseville Diesel Terminal installing recording devices on Caboose No. 1361 and KM unit 9014. The organization contends that the work performed by the German technicians belonged to the named Claimants holding seniority in the Roseville Seniority District. Carrier has challenged the jurisdiction of this Board and cites as authority Article 6, Section 8, of the Agreement dated September 25, 1964, between the National Railway Labor Conference and Eastern, Western and Southeastern Carriers' Conference Committees and employes of such carriers represented by the organizations comprising the Railway Employees' Department, AFL-CIO. Section 8 of Article 6 has the effect of giving exclusive jurisdiction of all subcontracting disputes to a Shop Craft Special Board of Adjustment. This jurisdictional question was first raised at the Referee's hearing. This Board finds that a jurisdictional question may be raised at any point in the proceedings. Therefore, we must determine whether or not the work performed by the Krauss-Maffei technicians constituted a subcontracting of work rightfully belonging to employes holding seniority in the Roseville, California, District. Award No. 62 of Special Board of Adjustment No. 570 was presented as authority defining "subcontracting" as contemplated in the September 25, 1964, agreement. This award based its finding upon the fact that the third party received no monetary consideration for the work performed, and was, therefore, not a subcontractor. This award involved reciprocal work being handled from a Fort Worth shop and a Little Rock shop in the nature of inspection. The facts involved in Award No. 62 were not compatible with the facts involved in this case, and Award No. 62 is, therefore, not controlling.

However, this Board finds that the work performed by the Krauss Maffei technicians was more in the nature of complying with express or implied warranties. The vendor of a unit such as the KM locomotive not only has the right to service the unit sold, but has the duty to make every effort to remedy technical and mechanical difficulties brought about by faulty construction of unworkable technical installations. This Board specifically does not include

in this right to service difficulties that can be remedied by Carrier's employees. This Board, therefore, holds that the permitting of the four German engineers or technicians to install testing equipment and test the KM locomotive at the Roseville, California yard did not constitute subcontracting and that this Board has jurisdiction to hear and determine the dispute in question on its merits.

We now move to the question of whether or not the work performed by the German technicians-engineers violated Rules 31, 33(a) and 96 of the current agreement. Rule 31 reads as follows:

"Except as provided for in the note to this rule, seniority in the class of a craft begins at the time the employee's pay starts. When two or more employees of each class in a craft begin work at the same time, their seniority rank shall be as of the time application for employment is filled out, such time to be recorded on application.

NOTE: Employees used temporarily as helpers of the specific craft, will not accumulate seniority as helpers in the craft in which used until regularly assigned as such."

Rule 33(a) reads as follows:

"None but mechanics or apprentices classified as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. This rule does not prohibit foremen, in the exercise of their supervisory duties, from performing mechanics' work."

Rule 96 reads as follows:

"Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment; all electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring of steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks, shipyard electricians' work and all conduit work in connection therewith. Operators of battery charging plants. Electric crane operators for cranes of 40-ton capacity or over. Inside and outside wiring at shops, buildings, yards, and on structures and all conduit work in connection therewith; cables, cable splicers, high tension power house and substation operators, high tension lineman (except work regularly performed by Maintenance of Way Department employees). All other work generally recognized as electricians' work."

Rule 31 above sets out the manner in which seniority is acquired, but is silent as to the type of work or duties reserved to any craft or class of employee.

Claimants rely principally upon that portion of Rule 96 which is:

"Electricians' work shall consist of maintaining, repairing, re-building, inspecting and installing the electric * * * meters * * * rheostats and controls * * *."

The facts disclose that most of the equipment installed in the caboose for the testing of the locomotive was not owned by the Carrier. Most of it belonged to the laboratory. The German scientists also contributed to the testing devices and apparatus used in making the test. The facts further disclose that the tests performed were made for the benefit of the Krauss Maffei and Maybach firms, although the benefits derived from these tests might incidentally improve the KM diesel units owned by Carrier. The facts further disclose that much of the specialized and technical equipment used were foreign to Carrier's employees, and required specialized operators using skills not possessed by Carrier's employees. It was necessary to use a Carrier employe (J. D. Webb, with seniority in the Sacramento Seniority District). The right to the use of Electrician Webb in the Roseville Seniority District has been determined in a companion case. However, the German scientists' use in this test are in a different category and worked in different circumstances than Electrician Webb. This Board finds that under the circumstances above set out, there is no merit to the claim of either of the claimants.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of January, 1968.