

Award No. 1032

Docket No. 940

2-C&S-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement the repairing of cars is carmen's work.

2. That the carrier is arbitrarily assigning section foremen and laborers to repair cars at Walsenburg, Cedarwood and Lascar, Colorado.

3. That the carrier be ordered to—

(a) Cease and desist from the assignment of section labor to perform carmen's work.

(b) Assign carmen regularly employed as such to perform carmen's work.

EMPLOYEES' STATEMENT OF FACTS: 1. That cars are set out of trains at Walsenburg, Cedarwood and Lascar, Colorado, for repairs, and the carrier assigns section labor to repair these cars for points of destination.

2. There are no carmen employed at these aforesaid points by the carrier.

3. The carrier maintains a force of carmen at Trinidad, Colorado. From this point Walsenburg is forty miles, Lascar fifty-eight miles and Cedarwood sixty-nine miles.

4. The carrier has declined the claim of the employees that carmen be assigned to perform these emergency repairs to cars set out of trains along the line of road.

5. The agreement controlling is dated effective September 1, 1938.

POSITION OF EMPLOYEES: 1. Rule 62 (b) of the controlling agreement is a special rule of the carmen's craft and provides that rebuilding or repairing freight cars is carmen's work.

2. Rule 66 of the controlling agreement provides that when necessary to repair cars on the road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work.

3. Rule 44 of the controlling agreement provides that none but a mechanic shall perform a mechanic's work and we consider that section men are not car mechanics.

Re-brassing cars is not enumerated in this rule, nor is it work of similar character to items mentioned in the rule.

Carmen have never been sent out to points away from shops on the southern division to re-brass cars. The re-brassing of cars away from points at which carmen are assigned has always been performed by other than carmen. Section forces and other classes of employes other than carmen have been used to re-brass cars at points where carmen are not employed for many years past.

System Federation No. 140, Railway Employes' Department, mechanical section thereof, which includes the Brotherhood of Railway Carmen of America, was authorized to represent the shop craft forces on this railway by the Board of Mediation on April 12, 1934. Subsequent to that date, two new agreements have been negotiated between this company and System Federation No. 140. During the negotiations of these agreements, the organization's representatives were informed that re-brassing of cars at points away from shops where carmen were not employed was being performed by other than carmen, and it was understood in those negotiations that Rule 66, as contained in the present agreement, did not apply to re-brassing of cars.

This same question arose five or six years ago and at that time the carrier took the same position as now, that is, that the rule was not violated when other than carmen re-brassed cars at points where carmen were not assigned, and the claim was dropped by the organization.

In view of the fact that the re-brassing of cars at intermediate points where carmen are not employed has not been performed by carmen, but has always been performed by others than carmen, and in view of the understanding reached in connection with the adoption of Rule 66, there cannot be any charge made of violation of the rule. Therefore, the Board should not order the carrier to cease and desist from performing the re-brassing of cars by section forces and should decline the employes' request.

If the Board would so order the carrier to cease and desist from performing this work, it would be requesting and requiring the carrier to adopt a new rule in its agreement. The Board has no authority to write new rules into the agreement.

As the claim presented to your Board is not identical with the claim that was presented and handled with the officers of this company, the carrier reserves the right to file additional information and to enlarge on the information which is herewith submitted after it has had an opportunity to review the ex parte submission of the employes, and we further reserve the right to request an oral hearing if it is deemed necessary.

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.

The parties to said dispute were given due notice of hearing thereon.

Rule 66 of the agreement governs the right of carmen to repair cars on the road or away from the shops. This rule provides: "When necessary to repair cars on road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar character."

In construing an identical Rule in Award 1001, this Division held: "This rule does not expressly include the rebrassing of cars (the work involved in this proceeding), nor is the rebrassing of cars on the road or away from the shops work of a character similar to that specifically set forth in the rule." We adhere to this construction of the rule, and it follows that under the record facts the claimed right of the carmen at Trinidad to rebrass cars at Walsenburg, Lascar and Cedarwood must be denied.

AWARD

Claims 1, 2 and 3 denied because the facts of record show such claims relate only to the rebrassing of cars on the road and away from shops.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1944.