

Award No. 1091

Docket No. 1013

2-Erie-CM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100 RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1 — That on December 8 and 9, 1943, at Secaucus, New Jersey, the carrier violated the controlling agreement, and particularly Rule 25 (a), when ten maintenance of way employes were improperly assigned at the Penhorn car repair shop to make and install ship propellers carrying equipment to Erie Freight Car No. 45349.

2 — That in consideration of the aforesaid violation, the carrier be ordered to additionally compensate through equally dividing among Carmen M. Turczynski, P. Chopek, W. Senkowski, T. Babula, J. Olsen, J. Malek, J. Zarski, A. Kornelo and C. Hayduczok at the applicable time and one-half rate each and every hour worked by these ten maintenance of way employes on said Car No. 45349.

EMPLOYES' STATEMENT OF FACTS: The carrier assigned Erie car 45349 to the repair track at the Penhorn car shop, Secaucus, New Jersey, for the purpose of converting it into a car appropriate for carrying ship propellers.

Ten maintenance of way employes were assigned to make and install on said car this ship propeller carrying equipment. It required these ten employes two days of nine hours each — December 8 and 9 — to do this work, in connection with using as they did the car shop facilities.

At this time there were approximately 14 carmen and two carman helpers employed on the repair track at this car shop. They were working eight hours a day from 8 A. M. to 4:30 P. M., 30 minutes for lunch, six days a week.

The controlling agreement is dated, effective as to pay, July 1, and as to rules, August 1, 1942.

POSITION OF EMPLOYES: It is submitted that the improvement made to this freight car in question on the repair track at Penhorn car shop on December 8 and 9, 1943, was carmen's work within the meaning of Rule 81, captioned, "Classifications" and particularly that portion of the rule reading:

"Carmen's work shall consist of building, maintaining . . . all passenger and freight cars, both wood and steel, . . . and all other work generally recognized as carmen's work."

similar loading became lost, making it necessary for them to prepare a substitute car.

4. Work of blocking and bracing is normally done by the shipper subject to inspection and approval of car inspectors and in this case the shipper assumed the cost to the carrier of preparing this additional car for these propellers.
5. Apparently the men at Penhorn fully understood the situation because there was no dispute as is borne out by the statement hereinabove quoted signed by the two car department foremen and concurred in by the car department committeeman.
6. Even if this claim was a good claim, these claimants were not available to do this work at the time that it was done because they were all engaged full time in repairing cars and this work had to be done during daylight hours. There were no furloughed carmen or any carmen who could have been called to work during these daylight hours. Normally this work would have been done at Weehawken by the maintenance of way carpenter gang the same as similar work had been done by them on many, many occasions, but in this instance, because of an emergency and the fact that tracks at Weehawken were blocked with other cars, Penhorn was selected by the master carpenter and the scheduled maintenance of way carpenters brought their equipment to that location to do the work.

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 waived right of appearance of hearing thereon.

If the work performed was building or maintaining the cars in question, then carmen would be entitled to do the work. If, however, the work was simply blocking or bracing loads, or readjusting loads, it is not exclusively carmen's work.

This Division without a referee said in Award 33:

"Other than carmen may prepare cars for melon loading but shall not be permitted to perform repair or maintenance work, within the meaning of Rule 107 of the current agreement."

In Award 913 this Division in a somewhat similar case, with Judge Rudolph as referee, held that the work performed was not exclusively carmen's work.

As this referee reads this record, in light of the awards of this Division, the work performed was not building or maintaining the car, but rather it was blocking and bracing a load of propellers.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1945.