

Award No. 1165

Docket No. 1081

2-ACL-CM-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That classified repairs to cars regularly operated in passenger trains is work subject to be performed by "passenger train car builders and repairers, coach and locomotive painters."

2. That carmen defined as "freight car repairers" and "painters" in the wage classification of 97 cents per hour, who are required to perform the afore-said work, are entitled to be paid the rate of \$1.04 per hour.

EMPLOYEES' STATEMENT OF FACTS: The carrier is assigning cars regularly operated in passenger train service, numbered 1850 to 1899, to classified repairs at Emerson shops, Rocky Mount, North Carolina.

Car No. 1852 was the first to be put in the shop for classified repairs. This occurred on April 13, 1945, and the work on said car was performed by passenger train car builders and repairers, coach and locomotive painters, at the rate of \$1.04 per hour. This car was returned to service on April 18, 1945.

Car No. 1853 was next put in the shop for classified repairs on April 27, 1945, and the work on this car was performed by freight carmen and painters at the rate of 97 cents per hour. This car was returned to service on May 2, 1945.

The work on succeeding cars of this type regularly operated in passenger train service put in the shop for classified repairs has likewise been performed by freight carmen and painters at the rate of 97 cents per hour.

The carrier has declined to either assign carmen regularly classified and paid \$1.04 per hour to perform said classified repairs or to pay the applicable rate therefor of \$1.04 per hour to freight carmen and painters for such work.

The agreement dated effective November 11, 1940, and the supplements thereto, dated September 15, 1943, and February 24, 1945, are controlling.

POSITION OF EMPLOYEES: It is a fact that the classification of work of carmen as prescribed in Rule 402(a) includes, for example, all classes of cars operated both in passenger trains and freight trains, and by the terms of Section(b) of this rule it is necessary to consult Rule 12 to determine the extent to which the craft has been sub-divided, for computing seniority and other practical purposes.

freight cars and were, and are, shown as such in our mechanical roster of equipment. The mere fact that this equipment has been fitted up to take care of certain commodities which must be handled at high speeds does not in any way change the basic construction, and the cars remain box cars. The repairs to these cars are handled in the freight car repair yard by freight car repairers, because these men have been trained in the work of repairs to this type of equipment and they are equipped with tools and other appurtenances necessary in handling repairs to such equipment.

These are the same cars which were involved in dispute, Docket No. 835-ACL-CM, Award No. 909, and pictures of same were shown in Docket No. 835, Carrier's Exhibit A. It is the position of the carrier that this case is similar, but to a lesser degree, because only light repairs and repainting are involved. For the same reason that prevailed in the above-described docket, claim of employes in this instance should be denied.

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.

There is just one question: Are the cars here involved to be regarded as passenger train equipment or freight train equipment? Unquestionably they were built as freight cars. But that does not settle this question. Nor does the fact that this Division in Award 909 has determined that the remodeling of them was properly done by the freight carmen affect the problem now before us. For they were freight cars when the employes in that dispute started to work on them.

They must now be regarded as passenger car equipment. They were rebuilt or remodeled so that they could be used in passenger trains and Exhibits B, C, D, E, F and G introduced by the employes indicate that they have been used almost exclusively in passenger trains. If this were not so, it was within the power of the carrier to bring in its records to show that the cars have been used in freight service and the extent of that use.

The claim must be sustained with this qualification: The repair work on these cars should be performed by the employes, who under the rules of the agreement do the repair work on passenger car equipment at the point where the repairs may be made and they should be paid the rate paid such employes for work on passenger car equipment.

AWARD

Claim sustained as above qualified.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.