

Award No. 1487

Docket No. 1405

2-L&N-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the assignment of foremen to first shift carmen duties on Sundays, Decatur, Alabama, is not authorized by the current agreement.

2. That the carrier be ordered to discontinue such assignment and additionally compensate Carmen Frank B. Vaughan, W. T. Simpson, W. C. Sharp and Earl Riggs, equally dividing eight hours at time and one-half carmen's rate for each such assignment, subsequent to and including September 4, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 4, 1949, the carrier employed regularly at Decatur, Alabama, at least three carmen, namely, Frank B. Vaughan, W. T. Simpson and W. C. Sharp, one on each shift, seven days per week including all Sundays and holidays.

On September 1, 1949, the carrier established four regular carmen assignments of five days each, thus: Frank B. Vaughan, 7 A. M. to 3 P. M., Monday through Friday; W. T. Simpson, 3 P. M. to 11 P. M., Tuesday through Saturday; Earl Riggs, 7 A. M. to 3 P. M., on Saturdays, 3 P. M. to 11 P. M., Sundays and Mondays, 11 P. M. to 7 A. M., Tuesday and Wednesday. These carmen employes have been working the indicated assignments from that date forward.

On September 4, 1949, and each Sunday thereafter, Foreman A. J. Chapman assumed the first shift carman's duties between the hours of 7 A. M. and 3 P. M. These duties are comprised of inspecting trains, classifying cars, making such repairs necessary to safety appliance, removing and applying wheels, couplers, draft gears and all work incidental thereto, with the assistance of laborers, and any other repairs which can be accomplished at Decatur, Alabama, with the facilities available.

The Agreement of September 1, 1943, is controlling.

POSITION OF EMPLOYEES: The action of the carrier in the augmentation of carmen forces at Decatur, Alabama with foremen, one 8-hour shift

P. M., on Sundays. Working Foreman C. H. Chapman is on duty on Sundays, and is instructed to take care of any necessary carman work between the hours of 7 A. M. to 3 P. M. This service requires an average of about one hour of his time each Sunday.

POSITION OF CARRIER: Rule 29 of the current agreement, effective September 1, 1943, provides:

“(a) None but mechanics and apprentices regularly employed as such shall do mechanics’ work as per special rules of each craft, except foreman at outlying points, as listed below. Where there is not sufficient work to justify a mechanic of each craft, the mechanic, mechanics or foremen employed at such points shall, so far as capable, perform the work of any craft that may be necessary.

(b) For the purpose of this rule, the following have been agreed to as outlying points:

Owensboro, Ky.; Russellville, Ky.; Earlington, Ky.; Jackson, Ky.; Neon, Ky.; Lexington, Ky.; W. Knoxville, Tenn.; Chaska, Tenn.; Blue Ridge, Ga.; Bowling Green, Ky.; Leewood, Tenn.; Mt. Pleasant, Tenn.; **Decatur, Ala.**; Anniston, Ala.; Florence, Ala.; Gadsden, Ala.; Selma, Ala.; and may be changed by mutual agreement.” (Emphasis added.)

Decatur, Alabama, is one of the points set out in Rule 29 where it is permissible for working foremen to perform the work of mechanics where there is not sufficient work to justify the employment of a mechanic. No distinction is made as between what work the mechanic may do and what work the foreman may do. Both are placed in the same category so far as the performance of mechanic’s work is concerned. The Sunday business handled at Decatur on first shift is light in comparison to that handled on other days of the week, and is being satisfactorily taken care of by the working foreman in addition to his other duties. A check of the records for period February 15 thru March 21, 1951, shows an average of only 1-2/5 trains handled on Sundays between the hours of 7 A. M. to 3 P. M., requiring not more than one hour per Sunday of the working foreman’s time. This amount of work certainly would not justify the assignment of a car inspector on the first shift on Sundays. The present handling is clearly permissible under Rule 29 quoted above, and the right to so handle has already been confirmed by this Division in its Award 1391.

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.

Prior to September 1, 1949, carrier assigned three carmen at Decatur, Alabama, to work around the clock seven days per week. It is evident, of course, that a total of 21 shifts were being worked by carmen at this point each week. On September 1, 1949, carrier assigned four carmen on a five-day week basis to do the work at this point. The regular assignment of the four carmen consisted of twenty shifts. In order to complete the assignment of these positions around the clock, the carrier assigned a foreman to the first shift carman’s duties on each Sunday after September 1, 1949. It is the position of the organization that the working of the first shift on

Sundays is work which belongs to carmen and that it is a violation of the agreement to assign the work to a foreman.

The carrier admits that the foreman performs carman's work on this Sunday assignment. It relies upon Rule 29 of the applicable agreement to sustain the assignment of the first Sunday shift to a working foreman. The pertinent part of the rule provides:

“(a) None but mechanics and apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at outlying points, as listed below. Where there is not sufficient work to justify a mechanic of each craft, the mechanic, mechanics or foremen employed at such points shall, so far as capable, perform the work of any craft that may be necessary.”

Rule 29 specifically designates Decatur, Alabama, as an outlying point.

We think it is clear that foremen at Decatur may properly do mechanic's work under the provisions of Rule 29 (a) if the conditions set forth in that rule exist. One of the conditions is where there is not sufficient work to justify a mechanic of each craft, a foreman employed at an outlying point shall, so far as capable, perform the work. There are four carmen mechanics employed at Decatur and, consequently, the cited condition precedent to the assignment of a working foreman to do the work of a carman does not exist. It seems plain to us that the carrier cannot make use of Rule 29 to convert three 7-day around the clock positions into four 5-day around the clock positions and assign the extra shift to a working foreman. The plain wording of the rule limits the right of a foreman to perform carmen's work at outlying points where there is not sufficient work to justify the assignment of a carman mechanic.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1951.