Award No. 2845
Docket No. 2707
2-MP-FO-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Firemen & Oilers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than laborers were improperly assigned to perform work of transferring lumber from car DLW 45412 to car MP 30281, on January 25, 1956, at east end of repair track, Kansas City, Missouri.

2. That accordingly the carrier be ordered to compensate Laborers (Car Department) F. Thompson, W. M. Norman, N. Dudley and S. Fielder in the amount of eight (8) hours' pay at the straight time rate on the aforementioned date.

EMPLOYES' STATEMENT OF FACTS: Laborers F. Thompson, W. M. Norman, N. Dudley and S. Fielder (hereinafter referred to as the claimants) were deprived of work on January 25, 1956, since the carrier did, on the aforementioned date, assign Carmen J. F. Stepnoski, K. Miller, H. W. McBain and W. H. Light to transfer lumber from car DLW 45412 to car MP 30281. The claimants were available to perform this work if called.

The carrier does not deny they used carmen to perform the work of transferring the lumber from car DLW 45412 to car MP 30281; see letter from Chief Mechanical Officer Christy, dated July 6, 1956, submitted herewith as Exhibit A.

DLW Car 45412 was bad ordered to undergo repairs and for that reason the lumber was transferred to MP 30281.

The time consumed to transfer this lumber was eight (8) hours, and had the claimants been called, they would have been paid eight (8) hours each at the overtime rate.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The evidence set forth above supports the carrier's statement to the employes that the transfer of lading from one car to another made necessary by wrecks, derailments, shifted loads or bad order cars has never been assigned to, nor performed by, any class or craft of employes exclusively. Particularly the record proves that it has not been the practice on this property to have such work performed by laborers exclusively.

The burden of proof in this dispute falls on the employes since they are the moving party. The employes have offered no proof in support of the claim but have been content to make the general statement that laborers have "always performed" such work. No evidence has been offered to the carrier to support that statement. The very fact that local supervision at Kansas City felt free to and did use higher rated employes other than laborers to perform such work is further proof of the fact that no established practice exists to have such work performed by laborers exclusively contrary to the contention of the employes.

In conclusion the carrier repeats that

1. The duties of laborers have never been classified.

2. The work of transferring loads has never been allocated to any craft or class of employes.

3. The practice on this property does not support the contention of the employes that laborers have performed such work exclusively.

It follows that the claim is not supported by the agreement or practice on this property; that the employes have not offered the necessary proof in support of the claim and that the claim is completely lacking in merit. The carrier respectfully requests that the claim 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.

On January 25, 1956 a loaded car of lumber was bad ordered and the load was transferred by hand to another car by carmen employes.

Claim is now advanced by the Firemen and Oilers' Organization that its laborers should have been used. To support the claim it argues that such work has always been done by laborers and that such work is covered by the scope rule of the agreement.

The carrier's response is that other than laborers have often been used for such work and that the scope rule is not exclusive in its terms.

We find from the record that other than laborers have of necessity frequently done such work in the past. The agreement contains no classification of work rule. The scope rule provides in part:

"These rules govern the hours of service and working conditions of * * * car department laborers."

The rule does not describe the work covered by the agreement, but simply lists the various workers covered. It does not make the work exclusive to them. There has been no showing of a violation of the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1958.