

Award No. 3248

Docket No. 2981

2-SOU-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, the Carrier on September 5, 1957, improperly assigned Stores Department employees at Hayne Car Shop, Spartanburg, South Carolina, to handle and transport material (masking paper) from point of storage to racks in paint shop.

2. That accordingly the Carrier be ordered to additionally compensate Carman E. W. Lindsey for five (5) hours at pro rata rate for violation of Agreement on September 5, 1957.

EMPLOYEES' STATEMENT OF FACTS: Carman E. W. Lindsey, hereinafter referred to as the claimant, is regularly employed as such by the Southern Railway Company, hereinafter referred to as the carrier, at the carrier's Hayne Car Shop, Spartanburg, South Carolina. The claimant is regularly assigned Monday through Friday, 7:30 A. M. to 4:00 P. M., rest days Saturday and Sunday, in charge of and as driver of the material truck at Hayne Car Shop hauling material from the storehouse or other points of storage to the car department (including the paint shop and coach shop) and placing the material needed immediately in or near cars undergoing repairs. If the material is not needed immediately, claimant places the material in bins and racks in and about the shop.

On September 5, 1957, the carrier assigned stores' department employees to transport material (masking paper) from the point of storage (stores department) to the material storage rack located in the car department paint shop.

Prior to the instant case employees of the carman's craft have performed the work of securing material from the stores department and delivering or

It is evident, therefore, that the claim here presented cannot be sustained unless the Board disregards the evidence presented, and the agreement between the parties and practices thereunder, and attempts to impose upon the carrier conditions of employment and obligations with respect thereto not agreed upon between the parties by following the processes of collective bargaining. The Board has heretofore held that it would not take such action. For example, in Third Division Award No. 6007, Referee Messmore, it was held:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435."

In Third Division Award No. 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties.

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." See Awards 3523, 6018, 5040, 5976."

The Board, having heretofore recognized the limitations placed upon it by law and the fact that it is without authority to grant new rules or modify existing rules, such as here demanded by the brotherhood, and will not, therefore, attempt to further restrict carrier's rights, can make a denial award for this one reason, if for no other, and there are others.

CONCLUSION

Carrier has shown that:

(a) As a prerequisite to the exercise of the statutory power conferred upon it by the Railway Labor Act, the Board has to give due notice to employees of the clerical class or craft of all hearings in connection with the instant dispute and afford them an opportunity to be heard before taking jurisdiction of or passing upon the merits of the claim here presented.

(b) The effective agreement has been complied with and the claim which the brotherhood here attempts to assert is without any basis. In fact, it is absurd. The involved work was properly assigned.

(c) Submission of the claim to the Board constitutes nothing more than an effort by the brotherhood to establish new rules and working conditions by a Board decision, rather than by following the processes of collective bargaining. That the Board has no authority to grant the request and demand here made has heretofore been recognized by it.

If, after due notice has been given employees of the clerical class or craft and they have been given the opportunity of being heard, claim is considered on the merits, the Board cannot do other than make a denial award.

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.

Parties to said dispute were given due notice of hearing thereon.

Employes have not proven their claim No. 1, that the carrier assigned Stores Department employes, at the time and place set out, to transport material (masked paper) **from** point of storage **to** paint shop.

For interpretation of controlling Rule 151 of the agreement and the letter of agreement, October 9, 1939, see Award No. 3246 (Docket No. 2979).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.