

Award No. 5604
Docket No. 5408
2-CB&Q-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Burlington & Quincy Railroad Company violated provisions of the Controlling Agreement, particularly Article III of the Mediation Agreement of September 25, 1964, when Foreman W. Meyn improperly used the tools of the Carmen Craft to perform work within the provisions of Rule 75, on August 18, 1965.

2. That accordingly the Carrier be ordered to compensate Carman H. Jacobs, in amount of two (2) hours and forty (40) minutes at the punitive rate for said violation.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. Jacobs, hereinafter referred to as the Claimant, is employed as a carman on the repair track at Lincoln, Nebraska by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier.

On August 18, 1965, Repair Track Foreman W. Meyn performed the work regularly assigned to carmen. (Attached you will find copy of Employees' Exhibit A.) At the time the work was performed by the supervisor, there were a number of qualified carmen on duty, together with many others who were off duty but were available for call, including the Claimant. At Lincoln, Nebraska the Carrier maintains a repair facility around the clock, seven days each week.

On the above date of violation Foreman W. Meyn straightened sill step on car Q-192092; straightened hand hold and pin lifter on car No. Q-171198 and applied two new sill steps to car No. Q-192926.

As previously stated above, the claimant was off duty and available for call to perform the aforesaid work.

This dispute has been handled with the highest designated officer of the Carrier who has declined to adjust it.

In conclusion the Carrier reasserts its position, in the following manner:

1. It was the function of Foreman Meyn to see that proper clearance was observed on the hand hold and pin lifter being repaired by Carmen Sutter and Loos. It was also his job as foreman to make sure the sill steps were properly measured.
2. Under the agreement at page 92 of the schedule a foreman is expressly permitted to use the tools of the trade in a supervisory manner. This limitation was not exceeded.
3. Article III of Mediation Agreement A-7030 did not cancel the agreement between the parties reproduced at page 92, or paragraph (b) of Rule 27 of the Schedule.
4. By no stretch of the imagination did Carman Jacobs suffer any damages. The penalty claimed herein cannot be imposed against this carrier.

For the reasons outlined above, this claim must be denied.

(Exhibits not reproduced.)

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.

The record indicates that at the outset at least, two principles which seem to have been important in the minds of the parties were involved. The first of these principles is the contention that the letter of understanding appearing at Page 92 of the collective agreement at issue does not apply to car foreman, it being limited, as contended by petitioner, to shop foreman and welding supervisors. The record contains no evidence to support that contention.

The second principle to which reference is made in the preceding paragraph, pertains to the respondent carrier's understanding that petitioner was of the opinion that Article III of Mediation Agreement A-7030 eliminated the understanding appearing at Page 92 of the pertinent collective agreement. Petitioner disavows any such contention. See Page 3 of petitioner's submission in this dispute.

Thus we proceed to examine the record on the premise that (1) car foremen, such as Foreman Meyn, are no different than other foremen and supervisors for purposes of the pertinent agreement, and (2) the "Page 92" agreement was not abrogated, modified or superseded by Mediation Agreement A-7030.

As to the work or supervisory duties performed by Foreman Meyn, the record is in hopeless conflict. We, therefore, must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1968.