



**Award Number 5868
Docket Number 5617
2-MUS-CM-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)
MEMPHIS UNION STATION COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Memphis Union Station Company violated the controlling agreement, particularly Rules 22 and 23, and Article VII of the Agreement of August 21, 1954, starting December 1, 1966 when they assigned other than coach cleaners to perform coach cleaners' work at the Memphis Union Passenger Station, Memphis, Tennessee.
2. That accordingly, the Memphis Union Station Company be ordered to compensate Coach Cleaners James E. Gooden, Richard Petties and Rosie Gooden in the amount of eight (8) hours each per day, five (5) days per week, starting December 1, 1966 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Memphis Union Station, hereinafter referred to as the Carrier, was closed on April 1, 1964, and some of the trains moved to the Central Station and two other roads used other facilities on their own property. The Memphis Union Station was closed without proper permission and the Interstate Commerce Commission ordered the Station re-opened. The case was appealed through the Courts and finally to the United States Supreme Court who refused to review the lower courts decision, and in compliance with the court order the Station was again re-opened on a limited basis on December 1, 1966. No coach cleaners were returned to service, including Coach Cleaners James E. Gooden, Richard Petties and Rosie Gooden, hereinafter referred to as the Claimants, however, there were four (4) trains in and four (4) trains out of the Memphis Union Station each twenty-four hours. Two of these trains were cleaned by coach cleaners at the Central Station, but the remainder of the coach cleaning on the other trains was performed by other employes, predominately by car inspectors, thereby depriving the Claimants of their contractual rights under the controlling agreement, specifically Rules 22 and 23, which constitutes the basis of the claim.

This matter has been handled up to and including the highest designated officer of the Carrier who has declined to adjust the matter.

The Agreement of September 1, 1949, as amended, and the Agreement of August 21, 1954, are controlling.

capacity and has suffered no loss of pay, and is not entitled to the monetary relief requested for that reason as well as the other reasons stated above.

As we have shown, the claim in this docket is not supported by any rule in the Agreement and is entirely 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 employ 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 waived right of appearance at hearing thereon.

The Memphis Union Station was closed on April 1, 1964. It was reopened on December 1, 1966, following protracted litigation stemming from the closing.

Claimants were coach cleaners employed at the Station who were not recalled to service after it was re-opened.

Claim is based upon the contention that after resumption of servicing trains at the Station coach cleaners' work was performed by mechanics of the Carmen's Craft, which work belonged exclusively to coach cleaners by agreement. (Rules 22 and 23). Coach cleaners are covered by seniority subdivision 4 of Rule 22. Rule 23(g) is an assignment of work rule which permits the use of mechanics to perform the work of other crafts where necessary because of insufficient craft work.

It is not disputed that carmen were used to perform the limited amount of coach cleaning work remaining after the Station re-opened. But whether or not mechanics were improperly required to perform other than duties of another mechanical craft in violation of Rule 23 (g)—Assignment of Work—or Article VII of the August 21, 1954 Agreement, is not the real issue here. What is at issue is whether or not the Claimant coach cleaners held the contractual right to exclusive performance of the coach cleaning work involved in this case.

Rule 74 of the Agreement reads as follows:

"COACH CLEANERS:

RULE 74. (1) Coach cleaners to be included in this agreement and will receive overtime as provided herein.

(2) The starting time of any shift shall be agreed upon between the local officers and employes' local committee, based on service requirements.

(3) They may be assigned to any other unskilled work during their 8-hour period of service.

(4) Women will be given preference in assigning inside work."

This rule on its face does not reserve coach cleaning work to coach cleaners exclusively, nor is that work specified under the classification of work rules of the Agreement.

Absent a scope or classification rule establishing the claim of exclusivity (and there is none in the Agreement in evidence here), the Board has no alternative but to deny the claim for lack of rule support.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April, 1970.