

Award No. 244

Docket No. 241

2-SP-CM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES: That Martin Jorgensen be compensated at carmen's rate of pay for performing work as specified in the special rules of that craft, and that this be retroactive to April 1, 1936, the date this agreement was signed.

EMPLOYES' STATEMENT OF FACTS: Martin Jorgensen is assigned to operate a "Brown Hoist" in the Los Angeles general shops. In using this hoist Jorgensen performs the work that is designated in Section 1 and Section 2 of Rule 105 of the carmen's special rules, and that is generally recognized as carmen's work.

POSITION OF EMPLOYES: In the Los Angeles general shops, cars are set out on tracks running through the shop; there is an open track running parallel with those on which cars are set out for repairs. Mr. Jorgensen operates the "Brown Hoist" up and down the open track from which he is able to reach cars on both sides to a considerable distance. If a number of these cars have to be jacked up to remove trucks in order to make repairs or change wheels, the hoist is used to raise the cars while trestles are placed under same. At the beginning of a shift this hoist will move down two or three lines of cars and all cars that need raising and placing on trestles are lifted with the hoist while trestles are placed under them; then when the carmen begin removing wheels, bolsters, trucksides, draftarms, or any other part of the car that would require considerable strength to move, the hoist does the greater part of the lifting and in so doing takes the place of several carmen.

Rule 105, Section 1, provides:

"Freight carmen's work shall consist of the following work on superstructures and underframes of wood or steel freight cars, outfit cars, work cars, tank cars, water cars, steel tanks of tank cars and cabooses: Building, rebuilding and repairing. * * *"

Rule 105, Section 2, provides:

"Building, applying, removing, replacing and repairing trucks, (body bolsters, except on steel underframes), Changing car wheels It is understood that freight carmen's work not designated in Section 1 and not specifically described in Section 2 of this rule shall be considered and compensated for as Section 1 work."

the carrier to pay hoisting machine operators a rate of pay higher than that prescribed for said hoisting machine operators in the agreement, effective October 16, 1937. Rules 102, 103 and 105 do not deprive the carrier of its inherent right to have manual labor, and the lifting of material and parts, (the performance of which does not require carmen's skill) by employes other than those who are classified as carmen.

The carmen do all dismantling of and replacing of parts and all work which requires the use of tools including all work described in Rules 102, 103 and 105, they make all hitches, attachments and detachments incident to the hoisting machine lifting or lowering parts. The hoisting machine operator does not leave the platform of the hoisting machine.

It should be observed that the classification of hoisting machine operators, nor the work which may be assigned to such machines does not come within the scope of the agreement, effective April 1, 1936, whereas all of it is within the scope of the agreement effective October 16, 1937, and prior to October 16, 1937, neither the classification nor the work was within the scope of any agreement with any organization; therefore, the petitioner is prosecuting this claim with the carrier and before this Board for the purpose of transferring the classification and the work from the agreement effective October 16, 1937, to the agreement effective April 1, 1936, and for the further purpose of increasing the rate of pay.

As far back as records are available on this property and on many other railroads, laborers have been used to assist carmen in performing manual labor which must be performed before carmen can proceed with the skilled work incident to their craft; likewise, derricks and cranes, etc., have been used and operated by other than carmen to assist the carmen in lifting material and parts, including cars, wheels, trucks, frames, etc.; therefore, the carrier did not in this instance introduce any innovation nor deprive carmen of work to which they are entitled under the current agreement.

The carrier requests the Board to deny the claim.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

1 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.

2 This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

3 The parties to said dispute were given due notice of hearing thereon.

4 The carrier cites to support their contention the scope rule and "NOTE"* of an agreement with the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, effective October 16, 1937:

*"NOTE: It is agreed that hoisting machine operators and their assistants under this agreement (as shown in wage schedule), will not be used to perform any work with such machines that comes within the scope of any other agreement between the Company and any other Organization—Further, that at points where hoisting machine work is performed for the Motive Power and Car Departments by some other department, this Agreement as it relates to hoisting machine operators and their assistants will not apply."

5 The employes contend that Rule 105 of the Motive Power and Car Department Agreement between the carrier and System Federation No. 114, Railway Employes' Department, American Federation of Labor, effective April 1, 1936, is the rule which should govern. The Brotherhood Railway Carmen of America is one of the component organizations of System Federation No. 114 and a party to said agreement.

When this crane is used to assist carmen in performance of work covered by Rule 105, it is doing work within the scope of the agreement between the parties to the dispute. The "NOTE" does not nullify the provision of this agreement. 17

AWARD

The rate of pay shall be determined by negotiation in accordance with the last paragraph of the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1938.