

Award No. 858

Docket No. 792

2-N&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: The work of building and repairing hand cars, push cars, lever cars, motor cars in planing mill at Portsmouth shop that has been transferred to the maintenance of way department since January 1, 1942, is carmen's work. The carmen request that all work of this nature of which they have been performing since July 15, 1938, which has been taken away from them be returned back to them and all carmen affected by the transfer of this class of work, be compensated for time lost.

EMPLOYEES' STATEMENT OF FACTS: In the planing mill at Portsmouth shop, Portsmouth, Ohio, the building and repairing of motor cars, lever cars, hand cars and station trucks has been performed by men employed in the planing mill for many years. These men come under the carmen craft. The mechanic in the planing mill who has done this work has reached the age of seventy-two and is unable to keep up this class of work. The railroad company realized they would have to hire another man in the planing mill to keep up the repairs to hand cars, push cars etc. From January 1, 1942 up to the last month or two they have taken this work away from the carmen's craft and given it to the maintenance of way employes. The work taken away from the carmen was sufficient to employ a new man in the maintenance of way department.

POSITION OF EMPLOYEES: That under the controlling agreement, the employes contend that Rules 31 and 81 were violated when the company arbitrarily transferred the above-mentioned work from the carmen's craft to the maintenance of way department. To substantiate our claim, we quote in part Rule 31 as follows:

"Rule 31. None but mechanics, apprentices, hourly rated gang leaders and shop hands, shall do mechanic's work as per special rules of each craft, except foremen at points where a small group of mechanics is employed. This rule does not prohibit foremen performing work in exercise of their duties."

To further affirm our claim, it will be noted that Rule 31, as quoted in part above, refers to SPECIAL RULES of each craft. Therefore, in order to bring to the Board's attention that the carmen are justified in their claim, we quote the carmen's classification of work rule as follows:

CLASSIFICATION OF WORK

RULE 81. Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight train cars and steel cars being

"work in building and repairing motor cars * * * and station trucks, except such of this work where done by Maintenance of Way and Signal employes * * *." (Underscored for emphasis)

It is the organization's contention that the division of work between the two shops was frozen as it existed on July 15, 1938. (See Mr. Blackburn's letter to Mr. Henley of May 18, 1942, submitted as Exhibit B.)

The carrier denies the contention and asserts that the rule was inserted at the insistence of the carrier and that it was intended to provide for the performance of the work in question by either the motive power or the maintenance of way shops. The rule was only intended to provide that if the work of repairs to motor cars, lever cars, hand cars and station baggage trucks was done in the motive power shops it would be done by carmen and not by any other craft in the motive power department. If it had been the intention of the parties to freeze the work as the employes contend, then language as used in Rules 61 and 71 would have been employed. Rule 61 in pertinent part reads as follows:

"* * * present practice between sheet metal workers and boiler-makers to continue relative to gauge of iron * * *."

Rule 71 in pertinent part reads as follows:

"* * * present practice of winding fields and magnet coils with other than electricians in Roanoke Shops, to be continued * * *."

The quoted language of Rules 61 and 71 is called to the attention of the Division as it shows that where sheet metal workers and boilermakers were both performing the same work that these were words used to **freeze** the then existing condition, and likewise, Rule 71, where other than electricians were being used to wind fields and magnet coils in Roanoke shops, that the same words were used to **freeze** the then existing condition.

II.—Claim for Compensation.

No claim was made on the property for compensation and it is introduced for the first time in the employes' presentation of the case to the Division. Since this dispute has not been handled in the regular manner on the property as required by the Railway Labor Act as amended, it is the position of the carrier that the Division lacks jurisdiction to consider the claim. (See Awards 514 and 515, Second Division.)

But even if this Division had jurisdiction to consider the claim it would be without merit because there has been no monetary loss, and no carmen were furloughed. (See Award 1453, Third Division.)

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.

Prior to the instant dispute and subsequent to July 15, 1938 (the effective date of the current agreement) carmen at Portsmouth shop performed work coming within the provision of Rule 81 "*** * * Building and repairing motor cars, lever cars, hand cars and station trucks * * ***" The carrier definitely states that "*** * * since November 1941 none of this work has been performed in the motive power shop * * ***"

The record is not sufficiently clear to enable the Division to render a decision.

The parties should make further effort to adjust this dispute in conformity with their respective rights under the existing agreement.

AWARD

Dispute remanded without prejudice in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1942.