

Award No. 924

Docket No. 802

2-Read.-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (a) That the carrier has violated the controlling agreement and Rules 31, 32 and 107 thereof, by arbitrarily transferring upholsterers' maintenance work to other than carmen-upholsterers.
- (b) That in consideration of the aforesaid violation, the said work be restored to these carmen-upholsterers regularly so employed as such.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains at Reading, Pennsylvania an adequate upholstering shop, in which there are thirteen carmen-upholsterers, two apprentices and four helpers employed. They work eight hours a day, six days a week.

Only one shift is established in the upholstering department, while in the same shop building three shifts of other forces and facilities are operated.

Prior to February 3, 1942, the upholstering shop force performed all maintenance upholstering work on cars and locomotives sent to Reading shops for repairs.

On and subsequent to February 3, 1942, the carrier arbitrarily elected to perform certain of this upholstering work with other than carmen-upholsterers regularly employed as such.

POSITION OF EMPLOYEES: Within the meaning of the controlling agreement it is the contention of the employees that the carrier has no right or authority to arbitrarily perform the maintenance of motive power and rolling equipment upholsterers' work except by carmen-upholsterers regularly employed as such. This is substantiated by—

- 1—The purpose, intent, letter and spirit of the controlling agreement, dated effective January 16, 1940, hereinafter referred to as the agreement.
- 2—The agreement scope includes Reading shops and the maintenance of motive power and rolling equipment upholstering, etc.

This rule does not prohibit foremen in the exercise of their duties to perform work.

At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed so far as capable, will perform the work of any craft that may be necessary.

This rule does not prevent engineers and firemen on steam shovels, ditchers, cranes, clam shells, wrecking outfits, pile drivers and other similar equipment requiring repairs on line of road from making any repairs to such equipment as they are qualified to perform."

Carrier holds that the above rules are applicable to the employes within the scope of the shop crafts agreement **performing work in the motive power and rolling equipment department** of the carrier and all upholstery work being performed in the car shop at Reading is being performed by the proper employes in accordance with the rules and there has been no violation. Further, **there are no employes holding seniority as upholsterers that are not working**, therefore no seniority rights have been infringed upon or violated.

Carrier submits, in contracting for the reupholstering of the seats of two passenger cars, that it was not intended to deprive the employes under the agreement of work and it was done in good faith by the carrier acting in its discretion to complete the work according to program so that the completed cars as a whole would be in shape to return to service as quickly as possible due to the emergency and not have to wait for seats to be completed. No employes were deprived of work and there was no attempt to evade the provisions of the agreement to the disadvantage of the employes.

During the discussion of this case, General Chairman Reinert contended that the carrier should work the regular upholstery forces overtime if necessary to do the work. As to this it is the carrier's position that there is no rule that requires that this be done and which would compel the payment of time and one half, and if it had been done the carrier would no doubt have been presented with protests in regard to working extended hours.

In view of the facts and circumstances presented herein, the carrier holds that the contracting for the upholstery of the passenger car seats in this case is no different than contracting for the original car seats when the equipment was purchased.

The current shop crafts agreement requires that all mechanical car work **performed in the shops** be performed by employes within the scope of the agreement and this is being done in the instant case, therefore, there is no merit or justification for this claim.

Further, there has been no infringement or violation of the seniority rights of any employes, neither have any rules of the agreement been violated and to sustain this claim would be the equivalent to making a new rule which the Board is without authority to do under the provisions of the Railway Labor Act amended.

Carrier requests the Board to deny the claim in its entirety.

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.

The carrier's broad contention that it has the unlimited right to have its upholstering maintenance work performed by contractors not party to the agreement cannot be sustained. Such a holding in this case by this Division would defeat the very purpose of the agreement between the parties, and be contrary to the uniform holdings of other Divisions of this Board, construing agreements of similar kind and character. See First Division Awards 351 and 2171; Third Division Awards 615, 757, 779. The carrier should make every reasonable effort to augment its force to meet the increased demands occasioned by the present emergency. If after making such effort, the force is still insufficient to perform the required work, the carrier would then be justified in having work essential to meet its requirements performed by outside sources.

The carrier contends that it has attempted to augment its force but has been unable to do so; the employees contend that no real attempt has been made. From the record submitted we have been unable to resolve this disputed fact. We are of the opinion that the dispute should be remanded to the parties with instructions to both parties to cooperate to the end that upholsterers are employed sufficient to meet the needs of the carrier.

AWARD

Dispute remanded to the parties in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1943.