

Award No. 958
Docket No. 889
2-CB&Q-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That L. R. Richards classified and paid as a differential carman helper be classified and paid as a carman under the controlling agreement and Rule 68 (b) thereof, retroactive to August 15, 1941.

EMPLOYEES' STATEMENT OF FACTS: L. R. Richards was employed by the carrier as a carman on October 19, 1922, at Eola, Illinois, and bid on a car inspector's job at Aurora passenger yards, Aurora, Illinois, on or about the first part of 1927, remaining on this position until May 1, 1930, when car inspector's job was abolished; returning to Eola repair track. On or about August 1, 1930, the carrier put three shifts back at Aurora passenger yards but classified them as step rate carmen under what was known as the company union agreement. L. R. Richards was placed on this position from 8:00 A. M. to 4:00 P. M., doing identically the same class of work he did while he carried the title of car inspector. L. R. Richards' work consists of inspecting passenger cars both inside and out of the equipment, making all running repairs, coupling hose, and running air on out bound trains, oiling and re-brassing of cars, and keeping records of same.

The carrier has a store room and dressing room located between the depot and boiler room where they keep all supplies that are used on running repairs at this point. When check was made of the supplies on August 12, 1942, the following material was found to be carried in this store room—air hose, steam and signal hose, pipe fittings of all descriptions needed, knuckle pins, bolts commonly used in making running repairs, hand holds, brake shoes, brake shoe keys and other miscellaneous supplies. There are no carmen's rates paid for employees at the passenger yards. All the material named above is used by L. R. Richards on his shift and by the men on the other two shifts. L. R. Richards and men on the other two shifts perform the same duties. They alone have access to the store stock supply. L. R. Richards was carried on carmen's seniority roster from October 19, 1922 until January 1, 1942, then his name appeared on the roster as of October 19, 1922 as carman helper. All men working at Aurora Depot and passenger yards hold seniority at Eola repair track which is a suburb of Aurora, Illinois.

In this connection, the Board should observe that this dispute was appealed to Mr. H. J. Hoglund, at that time the highest officer designated to handle disputes involving the agreement of October 1, 1940, on November 18, 1941, (see Exhibit 4) wherein will be found the following statement:

"This case has been handled according to Rule 30."

This is in controvertible evidence that the general chairman understands that the controlling schedule agreement requires that grievance cases be handled in conformity with the procedure set forth in Rule 30 and in the same breath, so to speak, he is seeking to have the Second Division render an award which will excuse his own failure to abide by the clear provision of Rule 30 (b). If there was any merit in this case, which there absolutely is not, because we are paying the carman's rate for every minute of service as a carman, (see Exhibit 2) this issue, sad as it might be, would be resolved to a request that the clear provisions of Rule 30 (b) be vitiated by an award which the Board is without authority to render.

In conclusion the carrier asserts:

(1) The claimant is paid carman's rate for all service he performs as a carman,

(2) This claim was definitely and finally closed by reason of the general chairman's failure to comply with the provisions of Rule 30 (b), therefore,

(3) The Board is without authority to decide a dispute when under the provisions of Rule 30 (b), "it is agreed that the matter . . . be considered disposed of and closed."

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 evidence of record supports the conclusion that in the circumstances of this proceeding the claimant L. R. Richards is properly classified and paid as a differential carman helper under Rule 71 (a) of the agreement, except for such carman's work as he may perform, for which he is paid the carman's rate. Furthermore, the provision of Rule 68 (b) upon which the employes specifically rely is not, by its express terms, applicable at Aurora. In these circumstances it is unnecessary to determine whether the facts establish that the claim is barred by the provisions of Rule 30 (b) of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 20th day of October, 1943.