

Award No. 1043

Docket No. 970

2-Erie-CM-'44

**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. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement and particularly Rule 81, the building and repairing of station trucks operated by the carrier at the 14th Street Warehouse, Chicago, is carmen's work.

2. That the carrier violated provisions of the controlling agreement when on and subsequent to April 1, 1943, warehouse employees were assigned to building and repairing station trucks.

3. That in consideration of the aforesaid, the carrier be ordered to additionally compensate Carmen Jacob Gaber, Joseph Rajski, Leo Rosignal and John Clinton at the rate of time and one-half, for all building and/or repair work performed on station trucks by—

- a. Sam Matzel, stower, during the period April 1 to 15, 1943.
- b. N. Kurchaman, sealer, and Earl Anderson, delivery clerk, during the period July 12 to 19, 1943.
- c. Stanley Bakulas, checker, during the period of September 23 to 30; October 4 to 9; October 11 to 14, 1943.
- d. Other warehouse employees on all dates beginning with November 8, 1943, to date of disestablishment of the violation.

EMPLOYEES' STATEMENT OF FACTS: At the 14th Street freight warehouse, Chicago, the carrier maintains in addition to a force of warehouse employees, a force of carmen on a three-shift basis.

The hours of the first shift are from 8:00 A. M. to 4:00 P. M.; second shift, 4:00 P. M. to 12:00 P. M. midnight; and the third shift, 12:00 midnight to 8:00 A. M.

The shop tracks or the tracks on which these carmen work include all warehouse tracks.

In the warehouse basement, the carmen maintained the necessary materials and a repair bench prior to April 1, 1943. After this claim was instituted, the carmen were moved out of the warehouse basement into a shanty adjacent to the warehouse.

Federation No. 100 is applicable only to the employes in the mechanical department and does not apply or control work by employes in other departments who are covered by agreements negotiated by other organizations.

- 2—Minor repairs and replacement of parts on station trucks is work that has always been done by station forces in connection with their other duties, and it does not require any special skills.
- 3—There are no warehouse employes at 14th Street freight house, Chicago, assigned exclusively to building and repairing station trucks. Freight house forces make minor repairs and replace broken or worn replaceable parts. All trucks needing general repairs are sent to the car shop at Port Jervis, New York, where carmen do the work.
- 4—In some cases employes who are physically unfit to carry on their regular work as truckers, checkers, etc., are assigned to make minor repairs to station trucks and this enables them to earn a living during the period that they would have been otherwise disqualified entirely for work.
- 5—General Chairman James Longson received copy of the letter July 2, 1942, hereinabove quoted, in connection with the scope of the agreement. He made no claim that work of the type complained of here was exclusively carmen's work and if he did, this letter of July 2, 1942, would have made reference to this work as properly belonging to station forces, the same as reference has been made to maintenance of way work properly belonging to maintenance of way forces.
- 6—This ex parte submission by the carmen is an attempt on their part to have the Second Division interpret the rules of the agreement August 1, 1942, as covering all work irrespective of other agreements and irrespective of practices of long standing.

Claim should 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.

We are of the opinion that when a station truck at 14th Street Freight House, Chicago, becomes so disabled that it must be taken out of service for repairs, the making of the repairs as disclosed by this record is carmen's work within the meaning of Rule 81 of the current agreement.

Carrier contends that the effective rules apply only to work performed in the maintenance of equipment. Even conceding such contention we are of the opinion that the rules do not contemplate that carrier may assign this particular work, which should be performed by the maintenance of equipment department, to other employes not covered by the rules. Whether certain work performed by the maintenance of way department or other departments of the railroad is being performed consistent with the scope of the present rules is a question not before us. We hold only that there is nothing

in the record to indicate the parties intended that the particular work here involved could be removed from the maintenance of equipment department, or that it could be performed by some other department of the railroad.

The present facts will not support the claim for compensation.

AWARD

1. Claim sustained.
2. Claim sustained.
3. Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of November, 1944.