

Award No. 1503

Docket No. 1408

2-AT&SF-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
SYSTEM (Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement dismantling car trucks for repairs in connection with building and maintaining freight cars or the assembling thereof, is Carmen's work.

2. That it is improper, under the current agreement, to assign other than Carmen to operate derricks to assist Carmen in performing the aforesaid work.

3. That accordingly the Carrier be ordered to assign Carmen to perform the aforementioned work in Items 1 and 2 hereof.

EMPLOYES' STATEMENT OF FACTS: At West Wichita, Kansas, the carrier maintains facilities in the car department for building, maintaining and repairing refrigerator cars, including a force of approximately 300 carmen, carmen apprentices, carmen helpers and painters.

The carrier has in this department an Orton rail crane, gasoline powered, capacity 8 tons, identified as No. 44508, which is used to dismantle and assemble trucks by removing the truck side frames, wheels, bolsters, and assemble same to expedite the duties of carmen assigned to building, maintaining and dismantling cars for repairs.

Since July 18, 1950, the Orton derrick has been operated by Carman Helper F. J. Shaw, who is paid carman helper rate of pay. The agreement, effective August 1, 1945, and subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted to be as described in the foregoing statement of facts, indisputable that the derrick operator is substituted for a carman and is assigned to perform carman work, defined as such in the classification of work provisions of Rule 102, particularly that part which reads:

"Carmen's work shall consist of building, maintaining, dismantling for repairs - - - and all other work generally recognized as Carmen's work."

As to Item (a): There is and has been no dispute between the parties as to the work described in this Item (a) as being work properly belonging to carmen. Such work is being and has been performed by carmen. Any statement to the contrary is based on pure fabrication.

As to Item (b): The machine at the West Wichita shops, Wichita, Kansas, which the carmen's brotherhood is contending should be operated by a carman instead of a carman helper, is not a derrick. It is an Orton crane, i.e., a mobile boom-crane. The operator of this Orton crane is a carman helper classified and paid as such in accordance with shop crafts' Rule No. 104 and the wage appendix of the shop crafts' agreement, effective August 1, 1945. The Second Division has no authority to order the carrier to assign a carman to operate this Orton crane in direct contravention of a mutually agreed-upon rule, which provides without ambiguity, that carman helpers shall operate such machines.

The provision of the agreement that mobile boom-cranes shall be operated by helpers of the crafts (carmen's craft in this instance) is consistent with the practice generally in effect on this property of having helpers operate lifting cranes used for conveying heavy materials from one location to another and for lowering parts from locomotives and cars when being dismantled for repairs or lifting such parts when locomotives or cars are being repaired or rebuilt. For example, the operation of overhead traveling cranes has, by agreement, been recognized as the work of electrician helpers to the same extent that the operation of mobile boom-crane trucks has been recognized by agreement as the work of regular helpers of the different crafts. The former is specifically covered by Rule 97 of the electricians' special rules, which reads:

"Rule 97. Operators of traveling overhead electric cranes of less than forty (40) ton capacity, will be selected from electrician helpers and, if full time assignment necessary, will be regularly assigned. Operators of such cranes will clean and lubricate them. They will be paid thirteen cents (13c) per hour above the minimum rate paid electrician helpers at point employed."

The operators of the traveling overhead cranes in certain instances perform identical operations involved in the present dispute, in that crane operators move the crane from one location to another to pick up a pair of trucks, a car door, a car side and roof, etc., conveying it to the location where the repairmen are assembling the car and set the material in the proper place or hold it in place while the carmen, assisted by a helper or apprentice, set the parts into proper place and temporarily fasten them, preparatory to rivetting. There have never been any restrictions as to the use of overhead traveling cranes in handling this work and obviously there can be none, either in respect to the use of traveling overhead cranes or the use of mobile boom-cranes without nullifying and avoiding the appropriate rules of the agreement themselves.

In conclusion, the carrier respectfully requests the Second Division to dismiss the instant dispute for lack of jurisdiction on the grounds that it does not contain either the elements of a dispute growing out of a grievance or involving a question which requires the interpretation or application of an agreement or an agreement rule; reminds it that this Division has no power to modify an agreement, that to sustain the employees' position would be, in effect, writing a new rule or giving a meaning to the contract not warranted by a literal reading thereof and clearly not intended when the agreement was negotiated.

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 therein.

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

For all essential purposes the facts of this case, the issues involved and the rules and principles upon which it must be decided are the same as those set forth in the Findings of Award No. 1502 (Docket No. 1396), this day adopted. Therefore, based on what is there said and held the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.