Award No. 1698
Docket No. 1595
2-CRI&P-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than Carmen are improperly assigned to perform Carmen's work at the Biddle Car Shops, Little Rock, Arkansas.

2. That accordingly the Carrier be ordered to additionally compensate Carmen Z. A. Hicks, T. J. Garner, F. F. Dumboski and J. A. Carr by equally dividing among them the number of hours worked by these employes at the time and one-half rate on Carmen's work.

EMPLOYES' STATEMENT OF FACTS: At Biddle Car Shops, Little Rock, Arkansas, the carrier maintains a force of approximately sixty carmen, whereat passenger and freight cars, both wood and steel, are repaired and this car shop operates during the hours from 8:00 A. M. to 12 Noon and from 12:30 P. M. to 4:30 P. M. On this dismantling track located at this car shop, store department employes are assigned to dismantle cars, removing such usable parts as truck sides, side posts, side frames, top rails, center plates, side bearings, angle irons, channel irons, cover plates, hand holds, truck springs, body bolsters, triple valves, air cylinders, brake pipes, air valves, couplers, springs and followers. Parts from the cars being dismantled and needed for cars undergoing repairs on the repair track are moved direct to the repair track from the dismantling track. Other parts are delivered to the reclamation plant where they are re-claimed.

In conference with local management, Little Rock, March 19, 1950, agreement was reached whereby the assignment of store department employes would be discontinued. However, after a period of time store department employes were again assigned to dismantle cars and are at this time performing the above referred to work. The carmen named in the employes' statement of claim, hereinafter referred to as the claimants, were regularly assigned to work on opposite shifts and were available.

The agreement effective October 16, 1948, as subsequently amended, is controlling.

they may present their interpretation of their agreement between this carrier and the employes that organization represents, makes it mandatory that the claim be denied.

In the event your Board, notwithstanding the evidence forwarded to sustain the carrier's position and despite the Board's reiterated assertions that it will not and cannot entertain disputes of a jurisdictional nature, determine that the claim in this dispute should be sustained, it is the carrier's further position that the claim, as presented in paragraph 2, reading in part:

> ". . . equally dividing among them the number of hours worked by these employees at the time and one-half rate on carmen's work."

in contrary to the principle established on this and other Divisions of the National Railroad Adjustment Board and that the right to work is not the same as work performed. See Awards 1174, 1201, and 1382.

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.

This claim, made by the Carmen of System Federation No. 6, is based on the contention that carrier is using Store Department employes to do what is alleged to be dismantling of cars on its dismantling tracks located at its Biddle Car Shops at Little Rock, Arkansas. It is contended this is carmen's work and, since Store Department employes are not covered by their agreement, to permit them to perform it is in violation of their agreement. In view thereof it asks that four named carmen be each paid for an equal proportionate amount of the time worked by these employes at time and one-half.

The first contention made is that this Division has no authority to consider this claim because notice of its pendency, and all hearings thereon, was not given to the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station employes, as required by Section 3, First (j) of the Railway Labor Act. This is on the theory that the work involved is covered by the scope of the Clerk's agreement with the carrier. This issue is fully discussed in Awards 1359, 1628 and 1691 of this Division and 2253, 5702 and 6203 of the Third Division. We find the conclusions reached therein are correct and have application here. In view thereof we find this contention of the carrier to be without merit.

Rule 110 of the parties' agreement, insofar as here material, provides:

> "Carmen's work shall consist of . . . dismantling . . . all passenger and freight cars, . . ."

We said in Award 1393:

> "To 'dismantle' means to break down, strip, deprive or divest of equipment; or to remove the main fixtures from a machine."

On the other hand to scrap a car is to make scrap thereof. That there is a difference in the two is evidenced by Rule 45 of the parties' agreement.

Prior to October 16, 1948 the title to the parties' effective agreement provided:

> "It is understood that this agreement shall apply only to those who perform the work specified in this agreement in the Maintenance of Equipment Department."

As of that date there was added to the foregoing the following language:

> "and in other departments of this railroad, except where now covered by agreements with other organizations."

When adding this language the parties agreed it was done to prohibit the carrier from thereafter unilaterally assigning the work specified in the agreement to others than employes covered thereby except the change was not to cover work of the class covered thereby that was then being performed by employes of departments, other than the Maintenance of Equipment Department, under agreements covering them. That is, in departments of the carrier, other than the Maintenance of Equipment Department, the carmen do not have the exclusive right to all work of the class covered by the scope of their agreement as the agreement, by the title, expressly excepts therefrom such work which was, as of October 16, 1948, covered by agreements with other organizations. This exception makes it necessary to examine the agreements of other organizations which carrier says had agreements which, at that time, covered the work herein involved.

The Clerk's agreement with this carrier, effective as of August 2, 1945, covers, in Group 4, Scrap Cutters, Scrap Fabricators and Reclaimers. In Award 485 of the Third Division it was held the Clerk's Agreement covered the work of cutting scrap. When the scope rule of an agreement consists of the positions covered thereby it covers the work, which by tradition, it has been the usual custom and practice for such employes to perform. It is apparent that it has been a long established practice for employes of the Store Department to perform the work of cutting scrap and structural steel from condemned dismantled freight cars. This practice does not, however, apply to the work of removing the useable parts from cars that are ultimately to be scrapped.

Carrier says the work is being performed in the following manner:

> "First, the condemned cars are set on the dismantling tracks; the bodies are cut off the trucks by the Car Department Force and set to the side of the track. They are then set afire after which the steel frame is left intact.
>
> Car Department forces using the acetylene cutting torches cut off the roof, sides, and ends of cars. Following the completion of this operation, the Store Department Scrap Cutters and Reclaimers cut unuseable steel to salable melting pot size, and in this same operation cut off any structural steel parts which, in their judgment and experience are found to be useable. These reclaimable or structural steel parts are cut off by the use of a cutting torch and, of course, lose their original identity, because in their reuse for various purposes they have to be refabricated, that is, new holes would have to be drilled; . . ."

Whereas the employes say carrier is performing it in the following manner:

> "The bodies are lifted off the trucks and set to the side of the track and then Store Department employes dismantle the bodies by removing such useable parts as truck sides, side posts, side frames, top rails, center plates, side bearings, angle irons, channel irons, cover

plates, hand hold, truck springs, body bolsters, triple valves, air cylinders, brake pipes, air valves, couplers, springs and followers.

'The other method used is for the Store Department employes to go on these cars without the bodies removed and accomplish the same dismantling work as set forth . . . above."

If the carrier is doing the work as it claims then it has a right to do so and no violation of its agreement with the carmen results therefrom. On the other hand, if it is being done as the carmen contend then, in view of the Scope of the Clerk's agreement, such would be in violation of carrier's agreement with the carmen. The record is not sufficient to determine this issue for the only evidence adduced is in the form of conclusions which throw little, if any, light on the issue. We therefore return the claim to the property for the purpose of the parties' making a joint check to determine this factual question. If it is being done as carrier contends the claim is without merit. On the other hand, if it is being done as the carmen contend then the claim has merit.

If it is determined that the claim has merit it should be allowed from the time protest was made for the number of hours that were used in performing it. However, if allowed it should only be at the pro rata because the penalty for work lost is the pro rata of the position, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work.

AWARD

Claim remanded to the property for joint check, as provided for in the findings, with directions that the claim be disposed of in accordance with the findings resulting therefrom.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August, 1953.