

Award No. 1855

Docket No. 1725

2-PRR-URRWA, CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C. I. O.

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. The Employees claim the Pennsylvania Railroad Company is without the authority of the Controlling Agreement to assign other than Common Laborers to the duties accruing to that Craft and Class.

2. Consequently, the Employees are claiming eight (8) hours pay for J. E. Bolock for June 5, 1952, due to the unilateral action of the Carrier ordering J. E. Bolock to suspend his regularly assigned duties as a Carman Helper, June 5, 1952, and perform the duties accruing to the Laborer Craft and Class.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto, dated July 1, 1949 and subsequent amendments, copy of which is on file with the Board, and is, by reference hereto, made a part of this statement of facts.

At Mingo Junction, Ohio, Panhandle Division, Central Region, The Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs a force of carmen helpers and laborers.

J. E. Bolock, hereinafter referred to as the claimant, is employed at the seniority point in question as a carman helper.

During the claimant's tour of duty, June 5, 1952, he was performing work of his regular assignment as a carman helper.

The claimant was required to suspend the duties of his regular assignment and perform the duties of a laborer in the vicinity in which he normally works.

The claimant was paid the rate of carman helper for all time worked during his tour of duty, June 5, 1952.

The claim, as shown in the subject, was for an additional eight (8) hours pay at the common laborer rate.

Award No. 1122, Referee Thaxter:

"* * * This Board cannot make or amend a rule. It is bound by the agreements which the parties have made."

Award No. 1130, Referee Thaxter:

"* * * We must assume, in the light of the parties own interpretation with respect to pay for the ninth hour, that the increase of the bulletined hours beyond eight was not intended to affect the pay provided by the agreement of April 1, 1937, for hours worked beyond eight. To hold otherwise would be to write an entirely new agreement and that is beyond our power to do."

Award No. 1164, Referee Thaxter:

"* * * The argument which they have made before this Division is a very persuasive one for a change in the rule. But we cannot change rules. Our jurisdiction is only to interpret them."

Award No. 1181, Referee Cook:

"* * * The claim of the employees in its present status cannot be decided by the Adjustment Board as it does not grow out of the interpretation or application of the agreement concerning rates of pay, rules or working conditions (See Sec. 3, First (i), Railway Labor Act)."

Award No. 1386, Referee Chappell:

"* * * The Division concludes that such agreement control the claims made herein and require a denial thereof. To hold otherwise would require the Division to revise the old or make a new agreement which it has no right or authority to do."

Award No. 1468, Referee Carter:

"* * * Any extension of the scope of the application of the differential must come from negotiation and not by an interpretation which would only have the effect of revising the agreement, a function this Board does not possess."

The carrier asserts, therefore, that the applicable agreement cannot be changed or revised by the unilateral action of one of the parties or by an award of your Honorable Board.

The carrier respectfully submits that the claimant cannot show that the applicable agreement, on its face or as interpreted by the parties thereto, entitles him to the compensation which he claims, and that in the absence of any such showing the claim here before your Honorable Board should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, sub-section (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or applica-

tion of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim in this case would require the Board to disregard the agreement between the parties and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the work here performed was incidental to and an integral part of the claimant's regular assignment and was in fact carmen helper's work. Secondly, even making the assumption that the claimant performed some laborer's work, the carrier has established that the assumed use of the claimant temporarily on other than his regular assignment on June 5, 1952, was entirely proper and permissible; that the employees have not met the burden of establishing a valid claim in this dispute; and that the claimant is not entitled to the compensation which he claims.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the employees in this matter.

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 employees 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.

As of Thursday, June 5, 1952 when the incident here involved occurred, Claimant J. E. Bolock was a regularly assigned car repairman helper (carmen helper) at carrier's Mingo Junction (Ohio) Car Shop, with tour of duty from 7:00 A. M. to 3:30 P. M., Monday through Friday. The joint statement of facts agreed upon by the parties states in part: "During his tour of duty on the date in question, claimant, who was performing service on his regular assignment, was required to suspend such service temporarily and police the area where he was working in order to help clean up the area along the shop tracks in the car shop." (Carrier Exhibit A and organization Exhibit B.) Claimant was compensated at his regular helper rate for this day.

Organization contends claimant was assigned during this temporary period to perform the duties of a laborer, that such assignment was in violation of the agreement, and that claimant should therefore be compensated in the amount of 8 hours additional pay at laborer's rate. Carrier responds such assignment was proper since it was incidental to claimant's regular duties, but that even if he were in fact assigned to duties belonging to the laborer's classification or craft as defined in the agreement, petitioner nevertheless is not entitled to the additional compensation requested.

The evidence establishes that the task of cleaning up the area in which he is working is a customary function of the helper's classification, at least insofar as said work is incidental to the performance of the regular duties of a helper. Organization contends that since claimant was "required to suspend" service on his regular duties for the clean-up work, such work could not have been incidental to his regular duties. It further asserts claimant was required to assist in clean-up operations outside the area of his work assignment.

The record does not support the conclusion that claimant's assignment was other than incidental to his regular duties as a helper. Since he was required to "suspend such service temporarily" and "during his tour of duty on the date in question," it is clear the claimant was assigned to this temporary work for only a portion of his work day. Inasmuch as the petitioner has failed to specify the length of time consumed by such temporary work it is reasonable to conclude the period was brief. Certainly there is no evidence to the contrary. This work was performed in "the area where he was working," to quote from the joint statement of facts. And finally, claimant was not required to perform work above the level of skill for which he was paid.

Having considered the entire record, we are of the opinion and find the evidence does not support the claim.

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 December, 1954.