

Award No. 1920
Docket No. 1822
2-TM-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS MEXICAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carrier violated the controlling agreement dated December 15, 1937 and particularly Rule 72 thereof when it used employes of the T&NO Lines at Alice, Texas March 13, 1953, to apply one pair of wheels to Car FTLX 73 while car was in service of the Texas Mexican Railway Co.; and,

That Carrier be ordered to pay to Carmen H. Herrera, Juan Medina, and Luis Martinez eleven hours each at pro-rata rate—the time they would have earned had the Carrier not violated the agreement.

EMPLOYEES' STATEMENT OF FACTS: Car FTLX loaded with oil from Mirando City, a point on the Texas Mexican Railway, was consigned to a point on the MoP Lines with interchange point at Robstown, milepost 145 on the Texas Mexican Ry. Train No. 8 handling this car set it out at Herbonville, Texas, account hot box, and carman from Laredo was sent to brass same March 10, 1953. It was again picked up by train No. 8 and again set out at Mile post 100 account hot box, and carman from Corpus Christi was sent to rebrass this car, March 12, 1953. Car was again picked and taken to Alice by train No. 8, where one pair of wheels were applied by car forces of the T&NO—a line foreign to the Texas Mexican Ry., on authority of a defect card issued by the Texas Mexican Ry. Car was again picked up by Texas Mexican Ry. train and taken to Robstown—mile post 145—and delivered to the MoP Lines.

POSITION OF EMPLOYEES: Under the current agreement, there is no question but that the repairs to cars including the application of wheels is recognized as the work of carmen.

It is also recognized that repairs to cars are generally made at shop points, but that on occasion it may be necessary to make repairs to cars set out on line of road or away from shops, and Rule 72 clearly states that "When necessary to repair cars on the road or away from shops, carmen and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, and wheels and work of similar character."

That it is further understood that it may be necessary on occasion to make emergency repairs to equipment on line of road is clearly shown by

were deprived of any work by reason of the manner in which repairs were finally completed on the subject car.

Further consideration should be given to the fact that two carmen were sent on different dates to work on the same car, same defective journal, the first repairs permitted the car to move 39 miles, the second repairs 19 miles; thus it is evident that the carrier was acting in good faith with the organization. There was no defect on the car other than a cut journal, which caused the journal to run hot. The car contained 8,062 gallons of crude oil, net weight 59,659 pounds; the car weighed light approximately 45,000 pounds, making total weight of 104,659 pounds. The car was equipped with 5"x9" journal, with a carrying capacity of 136,000 pounds. Thus, it is seen that the car lacked 31,000 pounds of being loaded to maximum permissible weight.

The instant claim was handled in conference on the property, between local representatives of both the organization and the carrier and local representatives of the carrier declined the claim. The claim was finally appealed to the general manager, by letter dated April 4, 1953, and declined by the general manager in his letter of April 14, 1953. The claim was further considered in conference between the general manager and the general chairman of the Brotherhood Railway Carmen of America, December 5, 1953, at which conference the general manager advised the general chairman that "my position in this matter was unchanged to that reflected in my letter to Mr. Luis Martinez, Local Chairman, BRCA, dated April 14, 1953, in which I advised him that 'I do not find that the agreement between the Brotherhood of Railway Carmen and The Texas Mexican Railway has been violated. Therefore, your claims in this connection are respectively declined.'" There was no further handling of this claim until notice was received from President Michael Fox of the Railway Employees Department, A. F. of L., his letter of December 7, 1954, serving notice that this claim would be submitted by his organization ex parte to your Board. Giving consideration to the manner in which this case was handled, it is not felt that the instant case is properly before your Board, that it should have been progressed in a more reasonable period of time than more than one year from the date of the declination.

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 the dispute were given due notice of hearing thereon.

The controlling working agreement will sustain the first paragraph of the employes' claim; however, the facts and circumstances of this case are such that the pay requested for the claimants named in the second paragraph of said claim will be disallowed, without prejudice to any other case or claim.

AWARD

The first paragraph of the employes' claim is sustained and the second paragraph of said claim is denied, per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of May, 1955.