

Award No. 2059

Docket No. 1860

2-CRR-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement other than Laborers were improperly used to clean up on No. 10 repair track on September 29, 1953.

2. That accordingly the Carrier be ordered to additionally compensate Laborers R. L. Henley and R. B. Higgins each in the amount of 8 hours pay at the time and one-half rate for September 29, 1953.

EMPLOYES' STATEMENT OF FACTS: On September 29, 1953, the carrier assigned mechanics, helpers and apprentices to clean up waste coal and trash during the hours 7:00 A. M. to 3:00 P. M. that accumulated between the rails and around the vicinity of repair track No. 10. The above facts are confirmed by Superintendent Machinery P. O. Likens in his letter of October 20, 1953, a copy of which is submitted herewith and identified as Exhibit A.

Laborers R. L. Henley and R. B. Higgins (hereinafter referred to as the claimants) were available to perform the work if assigned or called.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under Rule 2, captioned "Scope", and reading as follows:

"Rule 2. These rules govern the hours of service and working conditions of the classes of employees shown below, working in and about shops, power plants, train yards and engine terminals:

others and was in keeping with past practices in existence prior to the effective date of the current agreement, which practice has been continued without previous protest subsequent thereto.

The debris, waste, and discarded materials removed from this repair track by mechanics, apprentices, and helpers was caused to be upon the tracks as a result of the performance of their own assignments and has always been removed by such employees. No rule of the agreement with the complainant employees gives the exclusive right to perform such work which is incidental to the regular assignments of other employees, but if by any stretch of the imagination such agreement could be so construed there is certainly no rule providing for penalty payments. This claim is, in effect, a request that your Honorable Board write for the employees a new rule, and the Division is without authority, under the Railway Labor Act or under the applicable agreement, to write such a rule into the agreement.

Under the rules of the agreement in effect, this claim is without merit and must be denied.

Further, the claim presented to the Board is not the claim progressed on this property.

Carrier respectfully submits that there has been no violation of the agreement; that the claim presented to the Board has not been handled with the Carrier; and that in all respects the claim is without merit and 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 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 this dispute were given due notice of hearing thereon.

During the first two hours of their shift at the repair track, mechanics, helpers and apprentices were used to clean up debris that had been dumped between the rails prior to this time. The record reveals that it was the usual practice for such employees to clean up around this track where they worked and in certain instances, when there were no cars on the track, a more thorough clean up was permitted and effectuated. This practice has not been specifically denied in the record of this case.

There is no rule in the current agreement which gives the claimants exclusive right to the work in question.

The work appears to be incidental to the performance of the work usually performed by the mechanics, helpers and apprentices on the repair track.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2059

The majority erroneously construed the exception in the controlling agreement in Award 2059. To say that the work of cleaning up repair tracks when no cars are on the tracks is not exclusively laborers' work is, to say the least, a stretch of the imagination. It is difficult to understand that merely sweeping up, picking up scrap fragments of lumber, and cleaning up can be regarded as mechanics', apprentices' or helpers' work. Nor can we understand, that when a repair track is closed down with no cars on the track to be repaired, that the cleaning of said track can be regarded as "incidental" to mechanics', apprentices' or helpers' work. The majority, obviously failed to take these matters into consideration in arriving at the findings and award in this dispute.

George Wright
Edward W. Wiesner
Charles E. Goodlin
R. W. Blake
T. E. Losey