

Award No. 2617
Docket No. 2435
2-AT&SF-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the carrier improperly assigned Bridge and Building employees to perform car carpenters' work of building tables and benches on January 9 and 10, 1956.

2. That accordingly the carrier be ordered to additionally compensate Carman J. J. Lappin in the amount of sixteen (16) hours at his applicable overtime rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a shop at Richmond, California, there employed is Carman J. J. Lapin, hereinafter referred to as the claimant, working hours of 3:00 P.M. to 11:00 P.M. work week of Wednesday through Sunday and rest days of Monday and Tuesday.

On January 7, 1956, Bridge and Building employees contacted the local representative of the carmen's craft and advised that they had been instructed to build tables and benches for use of employees at the Belt Transfer. The Belt transfer is located within the yard limits and at the north end of the Richmond Repair tracks. The local chairman contacted local supervision regarding the building of the tables and benches and was advised that the work in question was that of the bridge and building employees.

On January 9 and 10, 1956, the bridge and building employees were instructed to build the tables and benches. The equipment was portable and not a part of or attached to the building.

The claimant was available to perform the work if assigned.

I will take appropriate action to see that there is no recurrence of this nature.

Yours very truly,

(Signed) S. E. Fleming
General Chairman"

It will be noted that work of the nature involved in this dispute has long been claimed by the Maintenance of Way employees and that the carrier is in accord with that position. A sustaining award here would place the carrier in the untenable position of having to defend claims of the Maintenance of Way Organization.

It should be borne in mind that the benches and table which were constructed by B&B forces were not for use in a mechanical department facility nor were they constructed in such a facility. They were for use by switchmen in their locker room and were constructed in that facility, which is under the jurisdiction of the operating department.

Rule 102 of the shop crafts' agreement, which is quoted in carrier's statement of facts, is very clear in providing in the classification of work rule that work of carmen includes all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work.

The following, which appears on page 1 of the shop crafts' agreement of August 1, 1945:

"This Agreement shall apply to employes of these Carriers who perform work outlined herein in the Maintenance of Equipment Department, Communications Department, Newton Rail Mill and Water Service Department under jurisdiction of the Operating Department."

clearly limits the work of the shoft craft employes to the performance of work in Maintenance of Equipment Department, Communications Department, Newton Rail Mill and the Water Service Department under the jurisdiction of the operating department. In other words, the claim lacks support of the agreement on two points:

- (1) It is not work such as covered by Rule 102, and
- (2) It was not done in the Maintenance of Equipment Department.

Rule 29(a), quoted in carrier's statement of facts lends no support to the claim since the work complained of was not work such as is covered by special rules of the carmen's craft.

While the carrier believes that, on the basis of the record it has shown herein, the Board will deny this claim, in the unlikely event of a sustaining award, we respectfully call attention to the numerous awards of the various Divisions of the Board wherein it has been held that payments for time not worked should be at the straight time rate and not at the overtime rate as is claimed here.

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.

Bridge and Building employes were used in constructing portable table and benches in and for use by an Operating Department, namely Switchmen in their locker room in the yard. Claimant was a carman and contends that such work belongs to Carmen. The carrier disagrees stating that it was the historical and traditional practice on the lines of the carrier to assign carpentry work to Bridge and Building Department carpenters. Further, it pointed to the limited departmental jurisdiction of Carmen under the Agreement.

While the class of work done here may fall within the term "cabinet and bench carpenter work" appearing in the Classification of Work Rule for Carmen, (No. 102), that rule as well as the balance of the agreement in which it appears applies only to employes performing work in certain named department of which this division of the Operating Department was not named. In other words, under the Agreement cited by the Organization carmen were given cabinet and bench carpenter work * * * and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work * * * in respect to work outlined herein performed in: The Maintenance of Equipment Department, The Communications Department, Newton Rail Mill and the Water Service Department under the jurisdiction of the Operating Department. The work in question was performed in a department outside the scope of the Carmen's Agreement, hence did not violate that Agreement. This finding is consistent with our Award 2198.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September, 1957.