

Award No. 2746

Docket No. 2745

2-C&O-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier under the current agreement improperly assigned Carmen's work to other than Carmen at Hinton, W. Va. on February 26, 1956.

2. That accordingly the Carrier be ordered to compensate Carman Elmer Anderson for 4 hours call at his applicable hourly rate.

EMPLOYEES' STATEMENT OF FACTS: On February 26, 1956, about 9:00 A.M., Machinists Helpers D. R. Madison, Hubert Davis and G. D. Cart were directed by the carrier to remove bolt and take up slack between engine and tank on engine 1648.

Engine 1648 was in shop on February 25, 26, 1956, Hinton, West Virginia, and on February 25, carman and helper were called out to apply wheel and pull up slack on engine 1648. They were relieved before the job was completed. On February 26, 1956 Machinist Helpers were assigned to complete the job that was started by carman and carman helper on February 25, 1956. Mr. Bryant in his letter of December 3, 1956 states that on the morning of February 26 the car foreman was requested to send carmen to remove the bolt and take up slack, which request was ignored by the foreman. Copy of Mr. Bryant's letter of December 3, 1956 is submitted herewith and identified as Exhibit A.

This dispute has been handled with the carrier up to and including the highest officer designated by the carrier with the result that he has declined to adjust it.

The agreement effective July 1, 1921, as it has been subsequently amended, is controlling.

Carmen were on duty at Hinton and under no circumstances would Claimant Anderson have been called from the overtime board. It cannot, therefore, be agreed that Anderson has been deprived of service to which entitled.

The employes have contended that it was known on Saturday, February 25, that the draw bolt had to be removed. To this the carrier cannot agree. As previously stated, it was not known until the morning of February 26 when engine was being prepared for dispatchment that the draw bolt was still in the buffer casting. When this was discovered, effort was made to use carmen, demonstrating that the carrier acted on the best faith and only when it became apparent that the train would be delayed, were employes of another craft used.

Carrier submits that the claim is without merit and asks that it be denied in its entirety.

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.

While it is evident that the use of other than a carman to perform the instant work at the point in question was in violation of the agreement, there is no evidence of bad faith on the part of the carrier as the error was seemingly due to the negligence of one of the local officials; therefore, without prejudice to other or future claims, the instant claim for compensation is disallowed.

AWARD

Claim 1 sustained.

Claim 2 disposed of per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sussaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February, 1958.