

Award No. 2797
Docket No. 2549
2-B&M-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Carmen were improperly used to perform Carmen's Work on B&M Flat Car 33789 on March 12, 1956.

2. That accordingly the Carrier be ordered to additionally compensate Carmen A. Morby, H. Curtis, F. Fehily, E. Sheridan, J. Callahan and W. Cunningham in the amount of eight hours' pay each at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Flat Car No. B&M 33789 was placed on the Mechanicville repair track on March 12, 1956, to have the floor strengthened and other repairs made.

The floor of this flat car was in such poor condition it was not considered safe to be used for the loading which was to be placed on this car (i.e., cement truck), therefore additional flooring, three inches thick, laid lengthwise, was spiked to the original floor to strengthen the original floor, and make it safe for the material that was to be shipped on same. (See Exhibit A.)

In addition to the planking on the floor, short posts were placed in the stake pockets, with vertical planking fastened inside, and spiked to the stakes.

Approximately 320 lineal feet of 3"x9" planking and 16 posts 4"x5"x2'6" were used in reinforcing the floor and building sides for this flat car.

A Bridge and Building crew, consisting of W. Wallace, F. Ruthosky, T. Finnen, H. Boyer, G. Ford and Supervisor O'Connor, reinforced the floor of this flat car, and also applied the stakes and side planking to this car. (See Exhibit B.)

CARRIER'S STATEMENT OF FACTS: On March 12, 1956, a corrugated culvert was to be covered with poured cement concrete at Pownal, Vermont. The concrete was purchased from a nearby contractor and delivered in their cement truck.

The location of the culvert was not accessible by road and it was necessary to transport the cement truck by flat car, which was approximately 1,000 yards distant from the location where the cement truck was to be loaded onto the flat car.

The car was prepared at Mechanicville, New York, rip track by placing stakes in the stake pockets, placing a plank curbing against stakes as protection against concrete truck over-running edge of car, and placing temporary timber runners on the top of car floor to provide proper distribution of the car floor for the concentrated wheel load of the concrete truck. No repairs were made to the structure of the car or the floor plank. Only temporary runners were installed.

The flat car was then brought empty to Pownal, Vermont, to a point where a ramp had been constructed for the purpose of allowing the cement truck to move onto the flat car. Carpenters, represented by the Maintenance of Way employees, were used to prepare the subject flat car. The petitioner claimed that this was carmen's work, coming under the shop crafts agreement and alleges that the car was allegedly "reinforced" and "repaired" to accept the cement truck for transportation to the subject location. Claim is declined.

POSITION OF CARRIER: On the property the petitioners claim that Rules 109 and 26 of the effective agreement were violated. It is the petitioners' position that the subject flat car was "reconditioned" and "repaired." This allegation was fully refuted in the carrier's declination on the date of May 29, 1956, which reiterated the carrier's previous positions, wherein the subject flat car was simply reinforced to accept a large cement truck, and was not repaired or reconditioned.

The work performed was not car repairmen's work, as claimed, because the subject flat car was not reconditioned and no repairs were made as claimed.

Further, in support of the carrier's position, the subject "reinforcement" was taken off again by Maintenance of Way carpenters when the subject cement truck was returned to Mechanicville, New York, on the flat car. This certainly indicates that no repairs were made to the car when the reinforcement, or runners, was taken off the flat car after the cement truck completed its use.

Therefore, the particular operation performed by B&B carpenters, was not, as stated above, carmen's work and it was simply an operation of applying two runners to flat car to accept their own cement car, so that the excessive weight could be uniformly distributed. The flat car is presently without the so-called "runners"—and, therefore, it cannot possibly be argued that the car was repaired or reconditioned.

In view of the foregoing, the claim should be declined.

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 waived right of appearance at hearing thereon.

Reparations at the punitive rate are here sought for the above named employees, each covered by the effective Carmen's Agreement.

The basis of the claim is the alleged improper assignment and performance of work coming within the scope of the effective agreement by maintenance of way forces, in specific controvention of Rules 109 and 26 which read in part as follows:

"Rule 109. Carmen's work shall consist of building, maintaining, stripping for repairs, painting, upholstering and inspecting all passenger and freight cars, both wood and steel, * * *."

"Rule 26. None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foreman at points where no mechanics are employed. * * *"

The end to be achieved by the work in question was the preparation of a flat car to transport a "trans-mix" cement truck to a point on carrier's property inaccessible by road. We conclude that the materials were used in a manner to provide "runners" for the purpose of supporting and tying down the truck for safe transport. Such material was removed from the flat car after it had served its temporary purpose, so therefore, cannot be construed as maintenance, repair or building within the meaning of the above quoted rule. This being true, the work performance did not belong to carmen to the exclusion of all others.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2797

There is no justification offered, nor can any be found, for the majority's conclusion that because the instant work was performed for a temporary purpose it did not belong to carmen to the exclusion of all others. The applicable rules of the governing agreement do not authorize an exception to the right of carmen to perform carmen's work simply because the purpose for which the work is done happens to be of a temporary nature.

R. W. Blake

Charles E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink