

Award No. 2991

Docket No. 2672

2-WFE-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(Brotherhood Railway Carmen of America)**

WESTERN FRUIT EXPRESS COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement other than Mechanics were improperly used to perform work on mechanical refrigeration equipment, during the period July 23 through September 23, 1955.

2. That accordingly, the Carrier be ordered to compensate Carmen B. E. Hudson and W. E. Kaufman in the amount of hours, (as shown in Exhibit A), at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carmen B. E. Hudson and W. E. Kaufman are regularly employed at the carrier's Delta, point, which is located in Everett, Washington and are assigned to mechanical refrigeration equipment repairs. Prior to July 23, 1955 these employees had inspected, serviced and repaired the carrier's mechanical refrigeration equipment at nearby yards where no mechanical department employees were stationed or were not qualified to perform this type of work. These yards were located at Interbay, Ferndale, Mt. Vernon, Tacoma and Monroe, Washington. During the period beginning July 23, 1955 through September 23, 1955, the carrier unilaterally elected to require the supervisor, Mr. B. B. Whitmore, at Delta to perform this work. This work is now being performed by the claimants.

This dispute has been handled in accordance with the agreement effective July 1, 1945 as subsequently amended up to and including the highest designated officer of the carrier to whom such matters are subject to be appealed with the result that he has declined to make any kind of a satisfactory adjustment.

POSITION OF EMPLOYES: Rule 25 of the controlling agreement reads in pertinent part:

"Assignment

2. Rule 25 of the carmen's agreement does not apply here.

(a) The work here involved was never assigned to the claimants; the most they ever did was to assist the supervisor. The company has no employees at Ferndale, Mt. Vernon, Tacoma, and Monroe, Washington. It does have employees at Interbay, but none of them were qualified on mechanical refrigeration work in July, 1955. Without seniority at any of the involved points, the claimants could not claim the work as theirs, and Rule 25 could not apply.

(b) The work here involved was specifically assigned to the supervisor. From the practical standpoint he was the only qualified employee who could transport himself to the points where the cars needed servicing. Supervisor Whitmore has performed mechanical car servicing ever since he became qualified to do so. Supervisors at other points have become qualified and performed such servicing as well as their regular work on other refrigerator cars. The manner in which Supervisor Whitmore did the work was entirely consistent not only with the long-standing practice at Everett, but at other of the company's car conditioning points.

3. Messrs. Hudson and Kaufman, claimants herein, were working at Everett, Washington, during much of the time for which claim is made herein—they could not have been in two places at the same time. The company has not been provided by the brotherhood with the details of the time claimed in order to resolve the conflict between time actually worked by the claimants at Everett and time which they claim they should have been taken to outlying points.

CONCLUSION

The claims herein are without merit and should be denied. The rules agreement was not violated. Long-standing practices in effect support the manner in which the work in question was performed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claimants were employed at Everett, Washington, and the work involved was performed at Monroe, Mt. Vernon, Interbay, Tacoma and Ferndale, Washington, which are 14 to 110 miles distant from Everett. It was emergency work requiring automobile transportation, which the supervisor had but claimants did not possess during the period of the claim. Lacking such transportation, the claimants were not available to perform such work, within the provisions of Rule 25 relied on by them, so their claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.