

Award No. 3063

Docket No. 2571

2-ACL-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:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the controlling agreement other than Carmen were improperly assigned to inspect and make necessary repairs to A.C.L. car No. 92876 at Byromville, Georgia, on December 10, 1955.

(b) That accordingly the carrier be ordered to additionally compensate Car Inspector W. J. Walker for 4 hours and 15 minutes at the applicable overtime rate for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Car Oiler and Packer A. M. Randolph was sent from Fitzgerald, Georgia to Byromville, Georgia on December 10, 1955 with instructions to inspect and rebrass hot box on ACL Car 92876. He was accompanied by shop laborer as driver of the shop truck. The total time consumed in traveling to and from Byromville, including time spent in inspecting and rebrassing ACL Car 92876, was 4 hours and 15 minutes. After the repairs were made, the car was moved to destination without further attention.

Car Repairer W. J. Walker filed claim for 4 hours and 15 minutes at the applicable overtime rate account carman helper being used to perform mechanics' work.

The dispute has been successively handled on appeal as prescribed under the controlling agreement up to and including the highest designated officer with whom such complaints are to be handled and carrier has consistently declined to make adjustment.

The agreement of November 11, 1940, as revised and amended, is controlling.

receipt of request from the parties involved that the case be withdrawn. Copies of that agreement dated January 14, 1938 in connection with that award are submitted herewith and identified as carrier's Exhibit A. Carrier directs attention to the fact that this agreement was made with the International Association of Machinists, not the Brotherhood of Railway Carmen. Even if the carmen's organization had been a party thereto, it would be immaterial as this agreement was cancelled and superseded by the current agreement between the Atlantic Coast Line Railroad Company and the employes of the mechanical department, which was signed at Wilmington, N. C., on November 11, 1940, (copies of which are on file with this Board). The cancellation clause to which carrier refers will be found on page 56, paragraph (a), under "REVISION OF AGREEMENT", which reads:

"(a) The working rules of this Agreement shall be effective from November 11th, 1940, are not retroactive and continue without change until November 11th, 1941, and thereafter subject to thirty (30) days' written notice by either party of desire to revise the same in accordance with the procedure required in the Railway Labor Act. **This supersedes all previous agreements.**" (Emphasis added.)

In view of these facts, Mr. Winters' allegations as outlined in the second paragraph of his letter as mentioned above are completely without merit.

Particular attention is invited to **Awards 1001 and 1032** of this Division. In both cases, **cars were rebrassed at intermediate points on line of road by other than carmen** and in both instances the carmen's organization **sought to force the carriers involved to send carmen from terminals to rebrass cars on line of road.** In both instances this honorable Board **declined the claims.**

This claim is totally without basis for contention and represents nothing more than an endeavor to make work for two men where there was only work sufficient to necessitate the services of one. Carmen helpers have done this work for years and this fact cannot be disputed. Carrier, therefore, respectfully requests this honorable Board to render a denial award in disposing of this claim.

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.

The circumstances here are similar to those involved in our Award No. 3062 (Docket 2570), so it governs the disposition of this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS 3062 AND 3063

The ability or inability of the employes' representatives to deny or affirm the carrier's instructions to the helper has no bearing on the instant disputes since a carman should have been used to perform the work. In the instant cases a helper was substituted for a carman. Under Rule 27(e) "Helpers when used in any way in connection with mechanics' work shall in all cases work under the orders of the mechanic . . ."

It is apparent that the majority does not understand what constitutes rebrassing of cars set out on line of road on account of a hot box. Such rebrassing involves the jacking of the journal box high enough to remove the journal bearing wedge and journal bearing brass, inspecting of the box, inspecting of the journal, inspecting of the journal bearing wedge and inspecting of the journal bearing brass to determine whether one or all are defective. It must have been determined that the journal bearing brass in each of the instant hot boxes was defective inasmuch as new journal bearing brasses were applied.

All the foregoing work constitutes "Maintaining and inspecting of cars," which is defined in Rule 402 as being carmen's work. The current schedule agreement between this Carrier and System Federation No. 42 embodies and preserves the rates of pay, rules, and working conditions of the carmen and carmen helpers and stands as a protest against a repetition of the errors in Awards 3062 and 3063.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner