

Award No. 3085
Docket No. 2812
2-SP-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. Under our Current Controlling Agreement, Rules 13, 103, 104, and 105, the maintaining or repairing all freight or passenger cars, whether the cars be in shop or on the line, is the work of carmen.

2. Our Current Agreement was violated when other than carmen rebrassed Box Car U. P. 192501 on August 28, 1956, which had been set out of west-bound train "California Special" on August 27, 1956.

3. That under the Current Agreement, Carman C. H. Mulford was deprived of his employment rights on August 28, 1956 at about 1:30 P. M., when train crew Imlay Local Extra West 6425 rebrassed Box Car U. P. 192501, set out at Ocala, Nevada, August 27, 1956, account this car developed a hot box, location L 3.

4. That, accordingly, the Southern Pacific Railroad (Pacific Line) be ordered to compensate additionally the aforesaid carman in the amount of one (1) hour at the overtime rate of 3.201.

EMPLOYEES' STATEMENT OF FACTS: C. H. Mulford, hereinafter referred to as the claimant, was employed by the Southern Pacific Company, hereinafter referred to as the carrier. The claimant was first employed as a carman on September 14, 1925, at carrier's car department repair track, Sparks, Nevada. Claimant's regular assigned days are Monday through Friday, with Saturday and Sunday off.

August 27, 1956 a west-bound train, California Special, set out car U. P. 192501, a west-bound load of wheat for California, at Ocala, Nevada, account this car had developed a hot box on Journal Box L 3.

2. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
3. International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
4. Sheet Metal Workers' International Association.
5. International Brotherhood of Electrical Workers.
6. Brotherhood Railway Carmen of America."

As in the case of the foregoing rules, there is nothing in that rule which restricts trainmen from performing duties on equipment in their charge on line of road as occurred in this instance and such position has not been previously advanced or agreed to on this property.

Carrier submits the above clearly establishes that the brassing of cars on line of road is not reserved exclusively by any agreement or understanding to any craft or class of employes. Under the provisions of Rule 13 of the current agreement, quoted and discussed above, carmen may be used for that work; however, the rule is permissive only and by no manner of construction can it be interpreted as mandatory.

Without in any way receding from its position that the claim here under discussion is entirely unwarranted and completely lacking in merit, carrier directs attention to the fact that the penalty here sought is at the overtime rate of pay. This Board has in a long line of awards consistently held, with respect to penalty claims at the overtime rate of pay, that the contractual right to perform work is not the equivalent of work performed and has declined to sustain such claims.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

The Claimant contends that the current agreement was violated when other than Carmen rebrassed Box Car U. P. 192501 on August 28, 1956. It is undisputed that employes other than carmen did rebrass Box Car U. P. 192501. The Claimant contends that rebrassing is the work of the carmen and that the Claimant should be compensated accordingly.

The rebrassing of cars is ordinarily done by carmen and it is conceded that such work belongs to the carmen. The question is, do they have **exclusive** rights to rebrass cars? An examination of the record does not seem to bear out the contention that rebrassing is the **exclusive** function of carmen.

On the contrary, the record shows under what circumstances train crews may rebrass. Many awards of this Division, beginning with Award No. 43, are to the same effect. The 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 19th day of January, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3085

The majority concedes in the findings that rebrassing of cars is carmen's work and then takes the inconsistent position of denying a carman the right to perform such work and be compensated therefor.

It is evident that the carrier also concedes that it is carmen's work since **they** sent a carman out to perform the rebrassing. The fact that the rebrassing had been erroneously performed by other than a carman when the claimant carman arrived at that point was unfortunate but does not alter the fact that under the controlling agreement the work belonged to a carman.

Had the majority applied the agreement to the facts in the case, instead of attempting to justify their erroneous findings by following inapplicable awards, the instant claim would have been sustained. The norms to be followed are set forth in the controlling agreement and it is not within the scope of this Board to change them.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner