

Award No. 3653

Docket No. 3237

2-L&N-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Louisville and Nashville Railroad Company violated the terms of the Agreement in assigning Stores Department laborers to operate lift truck (tractor with lifting tables) and

2. Accordingly that Carmen Helpers be additionally compensated for all time worked in this capacity by Stores Department laborers subsequent to and including October 14, 1957.

EMPLOYEES' STATEMENT OF FACTS: The Louisville and Nashville Railroad Company, hereinafter called the carrier, beginning on October 14, 1957 assigned the duties of carmen helpers of operating tractors with lifting tables to stores department employes.

Prior to the aforementioned date carmen helpers had always performed these duties or been paid in lieu of other people performing such duties.

On January 23, 1956 an identical case was instituted with the carrier relative to using stores department laborers in the operation of lift trucks. That case was pursued in the usual manner up to and including the office of the carrier's superintendent of machinery, at which time the carrier, in effect, admitted their wrongdoing and paid the claim as presented.

As evidence of settlement of the former dispute, a letter dated February 29, 1956, as well as reply of March 29, 1956 is submitted herewith and identified as Exhibits A and A-1.

This dispute has been progressed with the Carrier up to and including the highest officer designated thereby to handle it, who consecutively declined to adjust the dispute, without the desired results being obtained.

The agreement effective September 1, 1943 as subsequently amended, is controlling.

upon which the operator rode while in operation in the shops. All of the so-called tractor type machines are operated by employes who ride the machine in a manner similar to that of a person driving an automobile or any other like piece of equipment. The machine referred to in this dispute can by no stretch of the imagination be considered a tractor-type machine. It is powered by a storage battery and is operated by an employe on foot, being guided with a short handle, such as that used by a child in moving his "Christmas" wagon. The power to operate the truck is applied by pressing a button in the end of the handle. We have similar trucks that are manually operated, requiring a "pumping" like mechanism to elevate the load for movement. The truck in dispute uses a storage battery for this purpose.

The machine in dispute not being a tractor-type machine is not covered by Rule 142. It is a case of an employe doing nothing more than moving an ordinary wagon. Certainly such duties are not restricted to employes of any classification.

The present claim of the employes is merely an attempt on their part to have this Division write a new rule. It is one without merit or agreement support and should 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.

The parties to said dispute were given due notice of hearing thereon.

The evidence presented is insufficient to permit a determination as to whether operation of the equipment in question falls within the meaning of Rule 142 of the controlling agreement. The nature and function of the subject equipment are inadequately described in the record. Moreover, the claim does not identify the employe, or employes, for whom compensation is requested. For these reasons, the claim will be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this the 30th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3653

We do not agree with the majority that "The evidence presented is insufficient to permit a determination * * * ; however if such was a fact the claim should have been remanded, not dismissed. Moreover it is unimportant that the claim does not identify the employe, or employes, for whom compensation is requested. The proper employes entitled to compensation can be determined by the parties upon check. (See Second Division Award No. 3014)

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink