

Award No. 3679

Docket No. 3529

2-CofG-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the controlling Agreement on Monday, May 5, 1958 when it assigned Derrick Cook Elbert Smith (a shop laborer) to clean, sweep out, dust seats and windows, change or turn head rest covers, place supplies, etc., on CofG 651, 543 and 630 at Macon, Georgia.

2. That accordingly the Carrier be ordered to additionally compensate Coach Cleaner Mamie Lawrence, who holds Coach Cleaners' seniority at Macon, Georgia, in the amount of five (5) hours at the time and one-half rate.

EMPLOYEES STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, assigned Derrick Cook Elbert Smith (shop laborer) to clean, sweep out, dust seats and windows, change or turn head rest covers, etc. and otherwise clean and condition CofGa 651, 543 and 630 for passenger train service, on the passenger station tracks and Wash Yard at Macon, Georgia between the hours of 9:30 A. M. and 11:00 A. M., and between 12:30 P. M. and 4:00 P. M., on Monday, May 5, 1958.

Coach Cleaner Mamie Lawrence, hereinafter referred to as the claimant, holds the number one position on the coach cleaners' seniority roster at Macon, Georgia, maintains her home in Macon, was at home on her rest days this Monday in question, and was available for this work had she been called.

Several years ago, when the carrier first began cleaning passenger train cars at Atlanta, Georgia with its own employes, it was agreed between the organization and the company that furloughed coach cleaners from Macon would be used, but would not establish seniority at Atlanta until after all the coach cleaners at Macon were given the opportunity to establish seniority at Atlanta. Since that time all the coach cleaners at Macon have been furloughed and these same coach cleaners are on the new Atlanta coach cleaners' seniority roster in the same seniority order that they appear on the Macon roster. In other words all these coach cleaners hold seniority at both Macon and Atlanta in the same seniority order.

pretation or application of agreements concerning rates of pay, rules, or working conditions * * *."

See Section 3 First (i) of the Act.

It is well settled that the freedom of action of a carrier is restricted only by statutory enactment or by the terms of an effective agreement. There is no statutory enactment involved here. Certainly the effective agreement does not prohibit the act which is the subject of this claim nor does it require payment of the penalty demanded. There is no justification whatsoever for this carrier to be saddled with this unnecessary and unneeded position or expense. The instant claim is without any semblance of merit, and it should be denied in its entirety.

In this ex parte submission, carrier has clearly shown that

1. This claim should be barred;
2. This improper and unavailable claimant is not entitled to that which the employees are here demanding.

There is no basis or support for the claim of the employees. Carrier, therefore, respectfully urges the Board to deny the claim in its entirety.

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.

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

The cars in question had been thoroughly cleaned by coach cleaners at Savannah and Atlanta for their runs, and the cleaning at Macon consisted only of the slight dusting and incidental servicing normally performed by other employes enroute.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3679

If the cleaning at Macon had consisted only of servicing normally performed by employes enroute, as stated by the majority, it should have been performed by a porter after the cars left Macon; however, the very fact that a laborer was called to perform the cleaning shows that it was cleaning which should have been performed by coach cleaners. The carrier should have been ordered to compensate Coach Cleaner Mamie Lawrence as claimed.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink