

Award No. 3735

Docket No. 3557

2-CofG-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O.
(Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Carrier violated the controlling Agreement on May 2, 1958 when it assigned Car Foreman N. H. Lawson to temporarily relieve Wrecker Foreman W. A. McRae, who was absent on vacation, between the hours of 3:00 A. M. and 10:15 P. M. on said date.

2. That accordingly the Carrier be ordered to additionally compensate Carman J. M. Cummings the difference between what he was paid and nineteen hours and fifteen minutes (19' 15") at Wrecker Foreman McRae's straight time and/or overtime rate of pay, or the equivalent of ten hours and forty five (10' 45") at the applicable overtime rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, assigned Car Foreman Lawson to temporarily relieve Wrecker Foreman McRae, who was absent on vacation, between the hours of 3:00 A. M. and 10:15 P. M., May 2, 1958 to supervising the clearing of a derailment at or near Milner, Georgia on the date in question.

Carman J. M. Cummings, hereinafter referred to as the claimant, was paid the wrecker foreman's rate for shop bulletin hours only while working in the shop on his regular assignment on the date in question, and was available for this additional service had he been called.

Claimant is familiar with the work in connection with clearing up wrecks and derailments having worked in various capacities on the wrecking crew, including wrecker foreman and wrecking engineer and is at present used as relief engineer in cases when the regularly assigned engineer is unavailable. Claimant has also worked as a regularly assigned foreman, and there is no question as to his being qualified.

This dispute has been handled with all officers of the carrier designated to handle such matters, including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustment.

3. Since the claim clearly is not supported by the current contract on this property, the Board should not do other than render a denial award.

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 waived right of appearance at hearing thereon.

This dispute grows out of the following factual situation; the carrier assigned Car Foreman Lawson to temporarily relieve Wrecker Foreman McRae, who was absent on vacation, between the hours of 3:00 A. M. and 10:15 P. M., May 2, 1958 to supervise the clearing of a derailment near Milner, Georgia. It is the contention of the claimant, Carman J. M. Cummings, that he was entitled to the work, that he was available, and that he should be additionally compensated between what he was paid and nineteen hours and fifteen (19' 15") minutes at Wrecker Foreman McRae's straight time and/or overtime rate of pay.

Carrier asserts that this claim involves a jurisdictional dispute, that a third party is involved, to wit, the American Railway Supervisors Association, with this we do not agree, this dispute is subject to stand or fall on the provisions of the Agreement between the Central of Georgia and its Carmen represented by System Federation No. 26.

We turn now to the dispute involved. The same question, under the same agreement, involving the same parties, was before this Division in Award No. 1628, and we cite with approval from same:

"The dispute is governed by Rule 32, current agreement, which provides:

'Should an employe be assigned temporarily to fill the place of a foreman, he will be paid his own rate — straight time for straight time hours and overtime rate for overtime hours — if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of the respective craft in their departments.'

The foregoing rule means, we think, that if the carrier saw fit to fill the position of Assistant General Foreman that it would compensate the employe filling it at the rate of his regularly assigned position or that of Assistant General Foreman, whichever was the higher. But the position is one which the carrier could blank and not fill at all. This accounts for the use of the word 'should' at the beginning of the rule. If the carrier filled it, the higher rate as hereinbefore described would be paid. The second sentence contains the positive 'shall' and clearly means that said positions shall be filled only by mechanics of the respective craft in their department. It is separate and distinct from the first sentence of the rule and unequivocally says that such position shall be filled only by mechanics

of the respective crafts in their departments. The rule appears plain until we examine the rules of another craft incidentally involved in this dispute. Rule 32 standing alone awards the work to the Claimant Turner. Consequently, we feel that Claimant is entitled to the benefit of the agreement to which he is a party and that a sustaining award is in order.

It is argued that Rule 32 is a pay rule and that it should not be otherwise considered. The first sentence of the rule clearly involves pay rates. The second sentence does not. If the latter was to be construed as a pay rule only, it could have no effect at all as the first sentence completely disposes of the question of pay. If it is to be given any meaning, therefore, it requires foremen's positions to be filled temporarily with mechanics of the respective craft in their departments. Under the rules of contract construction, every part of a rule should be given meaning where it is possible to do so. The mandatory language used demonstrates quite conclusively that it was something more than a pay rule. It contracted the work in question to mechanics of the respective craft in their departments."

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.

DISSENT OF CARRIER MEMBERS TO AWARDS 3735 AND 3736

The majority, consisting of the Labor Members and the Referee, in our opinion failed to give proper interpretation to Rule 32 and proper consideration to the facts in the instant cases.

Rule 32 does not prohibit the use of a qualified foreman who is available so long as he is from the craft of those he is assigned to supervise. It is not the intent of Rule 32 to prevent other foremen within the same craft from filling vacancies caused by foremen laying off.

It is not reasonable to read into Rule 32 a requirement upon the Carrier to fill the place of a foreman, during temporary absence, with a mechanic who may not be sufficiently qualified by experience, judgment, and temperament to supervise other employees and in addition properly handle the other additional job requirements such as time keeping and material ordering without previous instructions when experienced and qualified foremen from the same craft are available.

The true intent of Rule 32 means that should a mechanic be used temporarily to fill a position as foreman, he is to be of the same craft of those he will be supervising.

The facts as set forth in the Carrier's original ex parte submissions clearly stated that a car foreman position was blanked on the dates claimed.

Furthermore, the majority has failed to properly consider item 2 of the claims after it had decided to sustain item 1 of the claims, and this neglect by the majority to properly consider both items of the claims more clearly illustrates the error of these awards.

For the reasons set forth herein, the Carrier Members believe the majority has erred in its findings and awards.

/s/ P. R. Humphreys

/s/ H. K. Hagerman

/s/ David H. Hicks

/s/ William B. Jones

/s/ T. F. Strunck