

Award No. 3962

Docket No. 3916

2-MKCS-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the provisions of the current agreement, the Carrier improperly allowed other than a Carman to repair Car GM&O 52703 June 30, 1959.

2. That accordingly, the Carrier be ordered to additionally compensate Carman J. I. Tilton five (5) hours at the applicable straight time rate.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri, the Milwaukee-Kansas City Southern Joint Agency, hereinafter referred to as the carrier, maintains a car repair track whereat is employed, among other carmen, J. I. Tilton, hereinafter referred to as the claimant.

On June 30, 1959, Car Cooperer Karl Engelbrecht, an employe of the Western Weighing and Inspection Bureau, appeared on the above referred to repair track and made request of the supervisor in charge, Car Foreman John Ince, for four (4) box car door post fillers, standard equipment parts for box cars. In compliance with such request, Car Foreman Ince instructed Carman-Millman O. B. Vaughan to prepare the desired material. When prepared, this material was taken by Engelbrecht to box car GM&O 52703 located approximately 100 feet from the repair track at the Norris Elevator where Engelbrecht proceeded to make repairs to said car.

This dispute has been handled with all carrier officials designated to handle disputes, all of whom have declined to adjust it.

The agreement effective June 1, 1945 is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that under the provisions of Rule 27 reading:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft.

This rule does not prohibit foremen in the exercise of their duties to perform work."

and in his original statement he stated he did not apply the material involved.

The employes also produced a statement, dated February 20, 1960, made by one I. L. Smith, which contained incorrect information, inasmuch as persons other than the carrier's carmen had previously performed work of the type here involved; and Engelbrecht, in obtaining the material simply did what he was in the habit of doing.

So far as concerns two or three references in statements submitted by Employes as to what General Car Foreman Tessmer told Engelbrecht about violating the rules, Tessmer has denied making any such statements but admits to asking Engelbrecht to refrain from such work in the future in the interest of keeping down controversy.

For the various reasons set forth above the claim should be denied, and the Board is respectfully requested to so find.

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.

The freight car identified in this dispute as GM&O 52703 was repaired by other than a Carman as claimed. Performance of such work by other than carmen employed by this carrier is in violation of the current agreement.

Carrier's Exhibit 8 evidences its intention to prevent such violations in the future; therefore the compensation claimed in this case will be disallowed without prejudice to other or future claims.

AWARD

Claim No. 1 Sustained.

Claim No. 2 Dismissed per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 11th day of April, 1962.