

Award No. 4084
Docket No. 3849
2-T&NO-CM-'62

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. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O.
(CARMEN)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, the Carrier improperly transferred the work of repairing cars, inspecting cars and inspecting air brakes on trains in the train yards and repair tracks at Jack-sonville, Texas, to the roundhouse foreman and roundhouse shop laborer.

2. That accordingly, the Carrier be ordered to:

(a) Restore such work to the carmen and carman helper.

(b) Compensate furloughed Carmen J. A. Russell, F. T. Green, Davis George and Carman Helper M. S. Fling for five, eight (8) hour days each week at the straight time rate, retroactive to June 22, 1960.

EMPLOYEES' STATEMENT OF FACTS: For many years and prior to June 22, 1959, the carrier maintained a force of car repairers and car inspectors consisting of three carmen mechanics and one carman helper. Their regularly assigned hours were; one carman 7:00 A. M. to 4:00 P. M., one carman helper 7:00 A. M. to 4:00 P. M., Monday through Friday, one carman 10:00 P. M. to 7:00 A. M., Wednesday through Sunday, with one hour for lunch and one carman with hours 7:00 A. M. to 4:00 P. M., Friday, Saturday and Sunday, with one hour for lunch and 10:00 P. M. to 7:00 A. M., Monday and Tuesday with one hour for lunch. The work performed by these three carmen and the carman helper consisted of inspecting and repairing cars and other mechanics' work, car interchange inspection, coupling air hose, making air brake tests and inspecting in and outbound trains.

On June 18, 1959, the carrier posted a bulletin stating the following:

had worked one day per week as a relief foreman since August 1, 1959. M. S. Fling was hired as a switchman at Ennis June 27, 1959; since then he has transferred to Jacksonville and now holds a regular position in that craft at that point.

Aside from the fact that the instant dispute is without merit under the rules of the agreement, the organization has failed to show that these employees sustained monetary damages. It would be unjust for the carrier to be required to pay a second day's pay to Messrs. Green, George and Fling because of the simple reason that they were not available for service at Jacksonville. They were on duty and under pay with this carrier for most of the time covered by this dispute at other locations on the property. They have been fully paid for all work performed. When the theoretical aspects of the organization's claims are examined, it will be noted that they fail to advance a realistic deprivation of work inasmuch as all of the complainants, with the exception of Russell, are fully employed on this carrier and would not be available for work at Jacksonville.

CONCLUSION: The issue in this case may be simply stated:

Does Rule 29 of the Agreement between the parties allow the Carrier to assign mechanic's work to foremen when no mechanics are employed at a particular point?

The answer to this question must be in the affirmative when the clear language of the rule is appraised. The carrier's interpretation of the rule is consistent with that of the Second Division and to pinpoint that statement, the carrier has quoted excerpts from Second Division Awards 2643, 2916, 2959, 3270, and 3304. The carrier submits that the denial awards of those disputes have set precedents which require a like award in the instant case. Aside from the fact that the claims are without merit on the above basis, the organization has failed to disclose monetary damages of the complainants.

Wherefore, premises considered, the Board is respectfully urged to deny the instant claims.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On June 22, 1959, the positions of the Claimants, three Carman and a Carman Helper at Jacksonville, Texas, were discontinued, and the claim is that the Carrier thereupon improperly transferred to the roundhouse foreman and a roundhouse shop laborer the work of repairing and inspecting cars and air brakes on trains at the yards and repair tracks there.

The Claimants were transferred elsewhere, except one who had an established insurance agency at Jacksonville and therefore chose to remain as a relief foreman for one day per week.

The record shows that the bulk of the inspection and repair work was removed from Jacksonville to other points. The claim is that the remaining carmen's work there was assigned to the foreman and the laborer; the Carrier alleges that the laborer performed no carman's work, but merely fueled, sanded and cleaned Diesels, cabooses, premises and buildings, and that the foreman performed the remaining mechanics' work in about four and one-half hours per day. We thus are presented with some unresolved questions of fact upon which no evidence was submitted.

The argument is made that by abolishing the mechanics' positions and at the same time assigning the remaining work to the foreman, the assignment was made while the mechanics' positions still existed and was, therefore, not proper under Rule 29. But the assignment did not take effect while the Claimants' positions existed at Jacksonville and it is not claimed that the foreman did any of their work while their positions existed. Under similar circumstances this Division has held that there was no violation of the Agreement. Awards 2916, 2959, 3270 and 3584.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 4084

If the majority felt that unresolved questions of fact had been presented then this case should have been remanded for determination of such facts. However, one question of fact was resolved and that was the fact, according to the carrier's own allegation, that the foremen performed mechanic's work about four and one-half hours a day. Due to the decrease in the amount of carmen's and carmen helper's work the carrier, without violating the agreement, might have reduced its force of carmen and carmen helpers in accordance with the seniority roster to the extent of retaining only one carman and one carman helper, but to transfer the work to employees having no seniority rights to such work constitutes a change in working conditions as embodied in the existing agreement and is in violation of said agreement.

An affirmative award should have been made enforcing the terms of the existing agreement.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink