

**Award No. 4230
Docket No. 4007
2-AT&SF-FO-'63**

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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)**

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement other than laborers were improperly used to clean cars at Brownwood, Texas account the Carrier's Representatives allegedly contracting work to yardmaster, commencing January 18, 1960, and he in turn hired employes having no contractual rights to perform such work.

2. That accordingly the Carrier be ordered to compensate Laborers A. Brooks, E. Hunt, H. J. Foster, L. B. Cole and C. F. Allison, Brownwood, Texas at the applicable laborer's rate of pay, commencing Monday, January 18, 1960 and to continue through Friday of each week; and at time and one-half for each Saturday and Sunday that the yardmaster has performed work in the car yard at Brownwood.

EMPLOYEES' STATEMENT OF FACTS: For many years the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier has assigned and used laborers to clean cars of all descriptions on its property. In the latter part of the year 1959, carrier set up at Brownwood, Texas, an extensive car cleaning program, consisting of installing a new track on the south side of the car yard next to the Roundhouse identified as track number 9 and purchase of a new vacuum cleaner for vacuuming grain from cars.

Prior to the carrier commencing its extensive car cleaning program at Brownwood, Texas, the employes' representative was advised by carrier's Master Mechanic J. D. Nimmo that the car cleaning work at Brownwood would be performed by laborers of the firemen and oilers' craft having seniority rights at Brownwood. However, upon determining that it would be

Record closed 11-16-60 account failure to advise the officer in charge of subsequent change in address under the provisions of Article VIII, Rule 22(c) of the Firemen and Oilers' Agreement.

L. B. Cole 11-11-55 1-31-57 6-4-60 6-24-60 Engine Washer

Record closed 9-25-61 account failure to notify officer in charge of current address as provided for in Article VIII, Rule 22(c) of the Firemen and Oilers' Agreement.

C. F. Allison 12-14-55 1-14-57 — — —

Record closed 9-27-60 account failure to notify officer in charge of current address as provided for in Article VIII, Rule 22(c) of the Firemen and Oilers' Agreement."

The carrier submits that the claim in behalf of claimant H. J. Foster is confined to the period from January 18, 1960, to November 16, 1960, and the claim in behalf of claimant L. B. Cole is confined to the period from January 18, 1960, to September 25, 1961, and the claim in behalf of claimant C. F. Allison is confined to the period from January 18, 1960, to September 27, 1960. In addition, any monetary compensation claimed in behalf of the claimants should be reduced by the amount paid them by the carrier for services rendered as listed above and also by any other wages earned by them from the carrier or in outside employment. In connection with the propriety of making such deductions, the Board's attention is respectfully directed to Second Division Awards 1180, 1282, 1638, 2653, 2811 and 3753 and Third Division Awards 6074, 6362, 6528 and others.

In conclusion, the carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without merit or support under the governing agreement rules and should be denied in its entirety for the reasons set forth herein.

The carrier is uninformed as to the arguments the employes will advance in their ex parte submission and, accordingly, reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the organization's ex parte submission in this dispute.

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 were given due notice of hearing thereon.

The record shows that prior to the Agreement, and for many years the carrier's freight cars have been cleaned at various points by independent contractors, and by section laborers, mechanical department laborers and car inspectors, and that no organization has claimed, or now claims, the exclusive right to that work.

The Agreement covers eighteen classes of employes, including roundhouse laborers and shop and plant laborers, but does not describe their work. It is claimed, but denied, that in the past laborers under the Agreement have been assigned to whatever work of the kind has been done at Brownwood; but it was not done there on any substantial scale until January, 1960, when a contract was let to an independent contractor for its performance on a train-yard track designated for this purpose.

Under these circumstances this Division cannot conclude that the Agreement has been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4230

The record presented to the Board discloses that prior to the date of this dispute the work in question had been assigned to the employes of the Firemen and Oilers' craft and performed as a part of their assigned duties under the controlling agreement.

The contracting of this work to an independent contractor without negotiation or discussion with the employes constitutes an arbitrary change in "working conditions" in direct violation of the Railway Labor Act. The assumption of the majority that the Scope Rule does not describe the work of the claimants is in error and we must dissent from this Award.

James B. Zink

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

E. J. McDermott