

Award No. 4437

Docket No. 4390

2-L&N-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the L&N Railroad Company, hereinafter referred to as the Carrier, violated the agreement when it abolished Lift Truck Operator J. E. Faulkner's job on June 30, 1961 and assigned other employes to perform this work.

2. That the Carrier be ordered to pay J. E. Faulkner, hereinafter referred to as the Claimant, for all time lost, including vacation and all other rights unimpaired, since June 30, 1961.

3. That the Carrier be ordered to restore the work herein involved to the Lift Truck Operators.

EMPLOYEES' STATEMENT OF FACTS: The claimant is carried on the Crane & Lift Truck Operators' seniority roster, Rank No. 1, seniority date of July 5, 1940.

Prior to June 30, 1961, claimant was regularly assigned to first shift, Monday through Friday.

Claimants duties consisted of operating various items of motorized equipment such as lift trucks, movable cranes, etc., in order to move or transport stock, parts, oil, etc. This work was performed for the stores department, locomotive shop, car shop, and, in general, in and around the entire L&N Shops, Corbin, Kentucky.

The Lift truck operators seniority roster is referred to on this carrier's property as a "frozen" roster and the operators carried thereon are entitled to perform this work until such time as the seniority roster is exhausted through attrition, at which time the work would be assigned to the various crafts in accordance to the preponderance of the work.

painting equipment with lift truck. We discontinued painting freight cars June 29, 1961, thus eliminating all of this work.

6. Acetylene and oxygen tanks, as well as lumber, were formerly handled on special skids. Storeroom personnel would load and unload these skids while the lift truck was standing by with the driver in attendance; considerable time being wasted as skids were loaded and unloaded. The use of skids has been discontinued and lumber is now loaded onto wagons which are moved by tractor. The oxygen and acetylene tank storage houses have been relocated alongside the unloading dock thus eliminating the need of handling such material by the lift truck.

7. Most of the locomotive material formerly handled by the lift truck, such as oil drums, boxes of filters, etc., could be loaded on the lift truck only in proportion to the length of its bed, which required considerable waiting time on the part of the operator while loading and/or unloading. Such materials are now loaded onto wagons and moved by tractor.

8. The practice of collecting scrap metal over a period of several months and then forwarding it to Louisville, Kentucky, was discontinued, thereby eliminating double handling. This further reduced the need for services of the lift truck operator.

From the foregoing, it is clear that the need for lift truck services has been drastically reduced. In order to determine definitely how much the machine is used, an actual check was kept on its usage for the period April 23 to June 3, 1962. Subsequent changes in the work requires only about an hour per day at present.

As to the so-called "no transfer of work rule," nothing contained therein prohibited carrier's abolishing the position when the work disappeared. The claimant's name, J. E. Faulkner, was placed on a "frozen" seniority roster years ago and, therefore, he could not be used to perform service in any other craft. The carrier recognizes that Faulkner retains his original seniority dating and in event conditions change to the extent that the job is reestablished, Mr. Faulkner would be recalled to service, but carrier denies that he has any contractual right to perform what little work is necessary in view of the changes in operations as outlined above.

Support for the carrier's position in the foregoing will be found in numerous Awards of this Division, among them being Award No. 3655, Referee Lloyd H. Bailer, wherein it was held—

"Since the work of Claimant Hutton's previous position had declined to substantially less than a full-time job, the Carrier acted within its rights in abolishing it as a separate position. . . ."

All matters referred to have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

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 Claimant, first shift Lift Truck Operator J. E. Faulkner, with a seniority date of July 5, 1940, worked at the Carrier's Shop at Corbin, Kentucky, until the Carrier abolished his job on June 30, 1961 because of an alleged reduction in Claimant's work.

The Lift Truck Operators' Seniority List is a "frozen" one and those listed thereon could not be used to perform work in any other craft.

The Organization contends that:

1. members on the "frozen" seniority roster are entitled to perform their job duties until the roster is exhausted through attrition;

2. the Carrier was wrong in abolishing the Claimant's job because "There was still enough lift truck and crane work existing to keep an operator busy full time";

3. when the Carrier turned the operation of lift trucks and cranes over to employes in the Carmen's Craft it violated Rule 142 of the controlling Agreement.

The Carrier contends that:

1. the Claimant's work duties "had decreased to such an extent there is not more than an average of approximately one hour per day";

2. the "no transfer of work rule" does not prohibit the abolition of a position when the work disappears;

3. the Claimant has no contractual right to perform the little work remaining;

4. because the Claimant was on a "frozen" seniority roster, he could not be used to perform service in any other craft.

The pertinent language of Rule 142 of the controlling Agreement reads as follows:

"Tractor Operators

"The position of tractor operators, with movable stationary booms, and operators of tractors with lifting cables, load luggers, motor car operators * * *, employed in mechanical and stores departments, will be covered by the rules of this agreement and will be represented by the craft to which assigned."

The Carrier neither refuted nor denied, either on the property or in its submission, the statement the Organization attributed to Master Mechanic J. W. Stephens at a conference in July 18, 1961—which reads as follows:

“* * * Faulkner had plenty of work to keep him busy and that he (Faulkner) was, in fact, one of the busiest men at the Corbin Shops.”

Nor did the Carrier even refute or deny the following statement made by Master Mechanic Stephens in his letter to Mr. Denham dated November 16, 1961:

“At no time have we had three carmen performing this work at the same time. There has been times, due to inexperienced men handling this equipment, it would be necessary for one to operate the lift truck and another the tractor crane.”

From the facts set forth above, it cannot be denied that the weight of the evidence unquestionably supports the Organization's position. It is equally obvious that the Carrier was not sufficiently acquainted with the Claimant's work load prior to abolishing his job. It is also evident that a work check prior to Claimant's lay-off would have prevented the Carrier's precipitant action.

In keeping with the findings set forth above, the Board rules that the Carrier violated the Agreement and that the Carrier must pay the Claimant, at the pro rata rate, for any wage loss suffered—less any wages earned—from June 30, 1961 until his retirement on September 12, 1962.

AWARD

Claims 1 and 2 sustained.

Claim 3 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1964.