Award No. 4568
Docket No. 4367
2-AT-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

ATLANTA TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That it was a violation of the current Agreement for the Atlanta Terminal Company to request, order or permit Carmen employed by the Seaboard, Southern, Central of Georgia, and other railroads, to come into the Terminal and perform work contracted to Carmen employed by Atlanta Terminal Company.

2. That accordingly the Atlanta Terminal Company be ordered to discontinue these violations and compensate the following named Carmen employed by the Atlanta Terminal Company in the amount of hours pay claimed on the dates designated:

M. E. Chaffin	5 hours' pay	December 25, 1961
R. N. Oglesby	5 hours' pay	December 29, 1961
H. P. Waldrip	5 hours' pay	January 2, 1962
H. L. Peppers	5 hours' pay	January 3, 1962
A. D. Wynn	5 hours' pay	January 3, 1962
H. L. Peppers	5 hours' pay	January 9, 1962
H. E. Adair	5 hours' pay	January 9, 1962
G. T. Peppers	5 hours' pay	January 10, 1962
R. N. Oglesby	5 hours' pay	January 11, 1962
G. O. Dover	5 hours' pay	January 13, 1962
H. L. Peppers	5 hours' pay	January 31, 1962
G. O. Dover	5 hours' pay	February 3, 1962
M. E. Chaffin	5 hours' pay	February 5, 1962
C. S. Davis	5 hours' pay	February 8, 1962
G. O. Dover	5 hours' pay	February 17, 1962
H. L. Peppers	5 hours' pay	February 21, 1961

G. O. Dover	5 hours' pay	February 24, 1962
H. L. Peppers	5 hours' pay	February 27, 1962
G. O. Dover	5 hours' pay	March 3, 1962
M. E. Chaffin	5 hours' pay	March 5, 1962
F. E. Davis	5 hours' pay	March 9, 1962
H. P. Waldrip	5 hours' pay	March 12, 1962
H. L. Peppers	5 hours' pay	March 14, 1962
G. O. Dover	5 hours' pay	March 17, 1962
M. E. Chaffin	5 hours' pay	March 12, 1962
G. O. Dover	5 hours' pay	March 25, 1962
H. L. Peppers	5 hours' pay	March 27, 1962

EMPLOYES STATEMENT OF FACTS: Each of the foregoing named claimants were off duty, available, ready and willing to perform the work here involved under the provisions of the controlling Agreement.

The Seaboard, Southern and possibly other carriers operating passenger trains through the Atlanta Terminal Company, Atlanta, Georgia, having eliminated many of their car inspectors and repairmen at passenger stations other their respective roads, thereby increasing the carmen's work required or necessary to be performed in the Atlanta Terminal. On or about August 14, 1961, while the local chairman was on vacation, the Atlanta Terminal Company requested or arranged for carmen employed by the Southern, Seaboard, Central of Georgia and Atlanta and West Point Railroads to be sent into the terminal to help inspect and repair their respective passenger, mail, baggage and official cars.

This dispute has been handled with the Atlanta Terminal Company's officers designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to make or offer any kind of settlement.

The agreement effective March 16, 1945, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted the claimants have a contractual right to perform all work within the Atlanta Terminal Company recognized or classified as carmen's work, and said claimants should have been called or permitted to perform the work involved according to the provisions of applicable rules of said agreement, which are quoted for your ready reference:

"AGREEMENT
between
ATLANTA TERMINAL COMPANY
and
INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
affiliated with the Railway Employes'
Department, American Federation of Labor.

Effective March 16, 1945

Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

'The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

In Second Division Award 3453, Referee Murphy, the board held:

"* * * This board lacks authority to direct a carrier as to how it shall conduct its operation; we only have authority to interpret and apply the agreements of these employes of which the Railway Labor Act gives us jurisdiction."

Thus, in view of the limitation placed on the board, it is without authority to do what is demanded in part 2 of the claim, i.e., order the terminal company to change its operation or operations of owner or tenant lines.

CONCLUSION: In conclusion, the terminal company submits it has shown that:

(a) The current agreement was not violated and the monetary claims are not supported by it. Employes of the terminal company have the right to perform only such work as the terminal company has to offer.

(b) The point here at issue has long since been conceded by carmen and their representatives.

(c) The board is without authority to do what is demanded in part 2 of the claim, i.e., order the terminal company to change its operation.

On the record, the board cannot do other than make 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 were given due notice of hearing thereon.

The parties, the submissions of the parties, the issues and the agreement, as well as the arguments of the parties involved herein are identical to those we considered in Award 4567. The only difference is found in the dates of claim.

All of which we said in Award No. 4567 is equally applicable here, and disposes of this dispute in the same manner as there.

AWARD

Claim 1: Sustained

Claim 2: Denied as to the mandatory relief requesting that we order a discontinuance of violations.

Sustained as to the compensation sought.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1964.

DISSENT OF CARRIER MEMBERS TO AWARDS 4567 AND 4568

The evidence of record reveals that prior to and when the agreement in evidence was negotiated and executed and throughout all the years it has been in effect, the established and recognized practice has been for carmen employed by the Terminal Company to inspect cars and trains, apply ground steam connections, cut steam connections, and from time to time make minor repairs to cars, primarily to avoid train delays, and for carmen of owner and the tenant line to service or make minor repairs to cars at the station, that the agreement was negotiated and executed in the light of this practice and that the practice was preserved by the following language in Rule 41 of the agreement:

> "It is mutually agreed and understood that the work now being performed by the respective Crafts signatory to this agreement is properly recognized as the work belonging to the respective craft * * * ."

It is true, as stated by the majority, that Rule 41 "reserves work to the crafts who are parties to the agreement," but it reserves to them only such work as they were performing at the time of negotiation and execution of the agreement. That was "the work now being performed" within the intent and meaning of these words as used in Rule 41. It definitely does not include work performed by owner and the tenant line carmen. Carmen employed by the Terminal Company have not been granted exclusive rights.

The monetary claims were based on Rule 7 of the agreement. This is not a penalty rule. It applies only when an employe is called or notified to return to work outside of his bulletined hours or on either or both of his assigned rest days. None of the claimants were so used. Furthermore, awards of the Board have held that the penalty work lost is the rate which an employe, if the work had been regularly assigned, would have received if he had performed it, i.e., the loss sustained is the value of the work if it were regularly assigned. This means that if the principles of prior awards are to be followed, only the actual time consumed in performing the claimed work could constitute the extent of an agreement violation.

As Awards 4567 and 4568 are contrary to the agreement and other evidence of record, they are erroneous. We, therefore, dissent.

P. R. Humphreys
F. P. Butler
H. K. Hagerman
W. B. Jones
C. H. Manoogian