

Award No. 4594
Docket No. 4389
2-L&N-CM-'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. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the terms of the current Agreement in recalling or permitting to be recalled to service, in its S/L Shops, 3 coach carpenters, 3 painters, and 2 upholsterers, who, as a whole, were not the senior furloughed employees in their classification, for the purpose of remodeling and making repairs to L&N Baggage Car No. 1499, and

2. That accordingly the Carrier should be ordered to additionally compensate the following employees who were entitled to perform this work.

(a) Senior furloughed Coach Carpenters, F. B. Dewitt, R. W. Wendler, and John Whitlock for 249, 232 and 128 hours, respectively, at pro rata rate of pay.

(b) Regular assigned Painters, R. L. Brangers, H. E. Poore, C. L. Boone and J. P. Whitehouse, who were entitled to call from the miscellaneous overtime board, for 55½ hours, each, at punitive rate of pay.

(c) Regular assigned Upholsterer, H. J. Lichtefeld, Jr., who was the only man assigned to and entitled to call from the miscellaneous overtime board for 26 hours at punitive rate of pay.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of 1960, all coach carpenters at S/L Shops, Louisville, Ky., were furloughed. They remained in this status until July 24, 1961, when G. H. Tomlinson and R. W. Shurrer returned to work, along with A. P. Bowman on August 14th, for the purpose of remodeling and repairing L&N Baggage Car No. 1499, which was located in the S/L Coach Shop. These men were not the senior furloughed coach carpenters but were listed as Nos. 12, 19, and 45, respectively, on the coach carpenters' seniority roster. They worked the following number of hours

In conclusion, carrier reiterates that this is not a case where it let a contract arranging for the performance of its own work or otherwise directed the work to be done. To the contrary, it is a case where the owners of the equipment, the Department of Economic Development, Commonwealth of Kentucky, permitted its use by the guild, a non-profit, charitable organization, which on its own volition, contracted with employes it hired and paid for the alterations on the baggage car which the guild determined was necessary for its peculiar and particular use. The work was not required by the carrier, and no active employe was assigned to perform this work.

It is indisputable that the carrier's part in donating the cars to the state and in agreeing to move them from time to time for the guild without charge were acts of a civic and charitable interest. It was these acts of the carrier which even made possible and resulted in employment by the guild of furloughed employes, thereby furnishing them active work which would not have otherwise been available to them.

There is no basis whatsoever for the claim that the employes have brought before this Board because the agreement covers only work undertaken by the carrier in connection with the operation and maintenance of its railroad. The work herein involved does not fall in that category, and the claim should be denied.

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.

During the latter part of 1960 all Coach Carpenters at the Carrier's South Louisville Shops were furloughed.

On May 22, 1961, the Carrier conveyed to the Department of Economic Development, Commonwealth of Kentucky, one railroad passenger coach (No. 2159) and one railroad baggage car (No. 1499).

The Kentucky Guild of Artists and Craftsmen, a non-profit charitable organization, had arranged with the Department of Economic Development to use the cars in a series of art and craft exhibits in economically distressed areas in Kentucky. The purpose being to interest needy persons in certain arts and crafts skills and thereby provide them with the opportunity to earn additional income.

The Carrier contracted with the Guild to move the two cars over its line without charge.

To prepare the cars for their designated purposes certain changes and alterations were required. The Guild selected furloughed Carrier employes

from a list given to it by the Carrier. The men selected made the alterations to the Baggage Car between July 14, 1961, and September 2, 1961, at the Carrier's South Louisville Shops. The men were paid by the Guild but at a sub-standard rate.

The Organization's time claim — dated January 11, 1962, on behalf of the most senior available Carpenters and also on behalf of certain Painters and Upholsterers — was denied on March 21, 1962, by the Carrier's highest officer on the grounds that "none of the agreement rules to which you refer are (sic) applicable and the claim is, therefore, one not properly covered by the Agreement."

The Carrier contends "that the disputed work was performed by the Guild and at the direction and expense of the Guild, and, therefore, the work that was done by the Guild for its sole benefit was not work accruing to employees under the agreement with this carrier."

The Organization contends that the work on Baggage Car No. 1499 was performed in the Carrier's Shops, using Carrier tools and equipment; the Carrier's action violated Rule 26 (g), 29 (b), 30 and 104 of the controlling Labor Agreement; and that the Carrier failed to observe the 60 day time-limit provision for answering grievances or claims as is required by Article V, Carrier's Proposal No. 7, of the May 20, 1955 Agreement.

The record establishes that the Carrier did violate the 60 day time-limit provision, and the claim could, of course, be sustained on that basis. The Carrier's defense "that the claim is, * * * one not properly covered by the Agreement" is unsound and unacceptable, because the Carrier doesn't have the right to prejudice a claim's validity. The Carrier's judgment error is clearly shown by the language used in Award 3637 — wherein the Board held in part:

"* * * the carrier's error is in assuming that Article V of the August 21, 1954 Agreement contemplated that it could prejudge the issues presented to it as claims or grievances and refuse to answer those that it considered were not appropriate. Article V requires a denial in those instances and reasons for denying."

Turning to the merits of this case, we find little comfort or support for the Carrier's position. The work in question was done on Carrier property, by Carrier employees, using Carrier tools and equipment, and with, of course, the permission of the Carrier. Furthermore, the Carrier also provided the Guild with lists from which to select employees. That the work performed came within the scope of the controlling agreement is undisputable. Therefore, it was incumbent on the Carrier to make sure that all pertinent provisions of the controlling Labor Agreement—especially 26 (g)—were observed.

The error of the Carrier's position is further evidenced by the fact that some four months after the work in dispute had been completed, Baggage Car No. 1499 was again placed in the Carrier's South Louisville Shops for additional repairs and alterations, only on this occasion the work was performed by the entitled employees and at the contract rate.

Consequently, the Board must sustain the Organization's claims.

AWARD

Claim 1: Sustained.

Claim 2 (a): Sustained.

Claim 2 (b): Sustained but at the proper pro rata rate.

Claim 2 (c): Sustained but at the proper pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December 1964.