Award No. 4667

Docket No. 4516

2-AT-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff 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 the 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:

C. S. Davis	5 hours pay	June 22, 1962
A. D. Wynn	5 hours pay	July 3, 1962
A. D. Wynn	5 hours pay	July 17, 1962
H. L. Peppers	5 hours pay	July 18, 1962
A. C. Simpson	5 hours pay	July 18, 1962
R. C. Cheek	5 hours pay	July 21, 1962
G. T. Peppers	5 hours pay	July 25, 1962
H. E. Adair	5 hours pay	July 30, 1962
H. P. Waldrip	5 hours pay	August 1, 1962
H. L. Peppers	5 hours pay	August 8, 1962
R. C. Cheek	5 hours pay	August 11, 1962
R. C. Cheek	5 hours pay	August 19, 1962
G. O. Dover	5 hours pay	September 3, 1962
R. C. Cheek	5 hours pay	July 14, 1962
M. E. Chaffin	5 hours pay	July 23, 1962
A. D. Wynn	5 hours pay	August 7, 1962
G. O. Dover	5 hours pay	September 10, 1962
H. P. Waldrip	5 hours pay	September 11, 1962
J. A. Baker	5 hours pay	September 13, 1962
M. E. Chaffin	5 hours pay	September 14, 1962

The work on the Birmingham Division was handled by the regularly assigned wrecking crew, augmented by such additional carmen as were needed. The number of additional men is always governed by the amount of work involved in each instance. The custom of calling additional forces as and when needed is practiced at all points on the carrier's property.

Without in any manner prejudicing its position as to what has hererto-fore been said in this submission, carrier submits that that portion of em-ployes' claim relative to overtime should be ignored, as the claim for penalty payment is without agreement support. The organization in progressing the claim for penalty pay has not cited any rule of the agreement to support same. In this connection, this Board's attention is directed to decisions handed down in its Awards 3672 and 3967.

In view of the circumstances as set forth in the foregoing, carrier asserts the claim is without merit and 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.

Rule 108 of the current agreement between the parties provides:

> "For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit. . . ."

In the case at bar it is not disputed that there was a wreck outside of yard limits and that the Carrier sent a wrecking crew to Altoona, Alabama which was not the regularly assigned crew.

The language of the contract quoted above is clear and unequivocal. Under almost identical circumstances, this Board, in Awards 3259 and 3936, involving the same parties held that the above rule was violated by the Carrier.

The rule was violated.

AWARD

The claims in the instant case are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

H. L. Peppers	5 hours pay	September 19, 1962
H. P. Waldrip	5 hours pay	October 2, 1962
H. L. Peppers	5 hours pay	October 18, 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 over 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 officials 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 the applicable rules of said agreement, which are quoted for your ready reference:

"AGREEMENT
between

ATLANTA TERMINAL COMPANY
and

INTERNATIONAL BROTHERHOOD OF BLACKSMITHS,
DROP FORGERS & HELPERS
BROTHERHOOD RAILWAY CARMEN OF AMERICA
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
Affiliated with the Railway Employes'
Department, American Federation of Labor
Effective March 16, 1945

"Rule 58. CLASSIFICATION OF WORK:

"Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards; this to include minor repairs to shop building; carmen's work in building and repairing motor cars, lever cars, hand cars, and station trucks; building, repairing and removing and applying wood locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, wood tender frames and trucks; air brake tripple valve

and apply the agreements of these employees 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. Employees 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 Organization alleges violation of the Agreement between Atlanta Terminal Company and its carmen because carmen of owner and tenant lines performed certain work on cars owned or used by them while such cars were on tracks owned by or leased to the terminal company or used at the station by owner or tenant lines in their operation of their trains into and/or out of the Atlanta station.

Carrier contends that the agreement is between the terminal company and its employes of the blacksmiths', carmen's and electrical workers' classes or crafts respectively. The terminal company does not operate locomotives or cars nor does it operate trains. Locomotives, cars and trains operated into and out of the Atlanta station are owned, operated or are under the control of the owner and tenant lines. It is therefore not within the power of the terminal company to grant to its carmen the exclusive right to inspect, service or maintain locomotives, cars or trains operated into or out of the station.

The Organization takes the position that the claimants have a contractual right to perform all work within the Atlanta Terminal recognized or classified as Carmen's work and the claimants should have been called or permitted to perform the work involved in the instant dispute. The Organization argues that there is no authority contained in the applicable agreement which allows this Terminal to lift work out of the Agreement and assign it to others not covered by its terms and it cites Award 1369 as authority for this proposition.

A careful reading of Award No. 1369 reveals that the factual situation which gave rise to that claim bears no resemblance to the facts of the instant case and the Award is therefore not apposite.

It would seem that the claim cannot be sustained since it is predicated on the Agreement which document concerns itself solely with only such work as the Terminal Company has it within its power to offer.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD No. 4667

We disagree with the holding of the majority that the facts that gave rise to the claim in Award No. 1369 bears no resemblance to the facts of the instant case and the Award is therefore not apposite. In both instances strangers to the governing collective bargaining agreement were permitted to perform work. The work in the instant case was performed by carmen not subject to the controlling agreement and it was therefore a violation of said agreement.

Contrary to the holding of the majority, the claim is predicated on the agreement which, according to Rule 67, "constitutes the sole agreement between the Company and employees affected . . ." Under the terms of the agreement carmen's work at the Terminal's facility is the work of carmen employed by the Terminal Company under the terms of that agreement. The agreement was correctly applied in Awards 4567 and 4568.

E. J. McDermott

C. E. Bagwell

T. E. Losey

Robert E. Stenzinger

James B. Zink