

**Award No. 4687
Docket No. 4482
2-AT&SF-CM-'65**

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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (COAST LINES)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly used employes of the Maintenance of Way Department to make repairs and remodel a car used by yardmasters as an office on October 21, 22 and 23, 1959 at Los Angeles, California.

2. That accordingly the Carrier be ordered to additionally compensate Carman C. A. Rosentreter eight (8) hours each day of October 21, 22 and 23 at his applicable hourly rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe (Coast Lines), hereinafter referred to as the carrier, employs the above mentioned employe, hereinafter referred to as the claimant, on a first shift assignment, work week of Monday through Friday, rest days Saturday and Sunday, at Los Angeles, California.

Beginning on October 21, 1959 and continuing through October 22 and 23, 1959, the carrier elected to use other than carmen to perform work on a railroad car, which is located within the seniority district of carmen at the 6th Street Trainyard.

The work consisted of making repairs and remodeling the car for the benefit of the yardmasters, who were using the car for an office.

The car is intact with wheels and setting upon a spur track.

This dispute has been handled up to and including the highest officer so designated by the carrier, who all have declined to make satisfactory settlement.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

being taken by the shop crafts' organization, until the instant claim was filed in October 1959.

The car body in question was a permanent structure. The trucks under the car served in lieu of sills or a foundation supporting the car, and the rails on which the wheels rested were placed there only for support and were not connected to or a part of any operating track. The identity of the car as a piece of rolling stock definitely ceased when it was retired from the Carrier's Rolling Stock Accounts in 1941 and listed in the coast lines building record. When the carbody was placed in its present location in June 1942, the running gear and the rail upon which it rested were suitable only for scrap but would serve in lieu of a foundation and, as previously related, was kept for that purpose to avoid the expense of constructing a foundation. Permanent electrical, telephone and water connections were installed, a fixed porch, handrail and steps were constructed and the carbody was otherwise fitted up for permanent use as a yardmaster's office.

The employees' claim in the instant dispute is based upon the technicality that the carbody in question has never been removed from its trucks and rests upon a short disconnected section of rail, yet, in their handling with the carrier, they have not shown that carmen have, at any time since the carbody was placed in service as a yardmaster's office in 1937, serviced or checked the carbody or its running gear to maintain it for mobile purposes. As a matter of fact, it was completely unfit for any kind of road service as evidenced by the fact that when it was no longer needed for a yardmaster's office, it could not be moved on its own trucks and it was necessary to load it on a flat car for shipment to San Bernardino for scrapping.

In conclusion the carrier repeats that the employees' claim in the instant dispute is wholly without merit or support under the rules of the shop crafts agreement and should be either dismissed or denied in its entirety, for the reasons hereinbefore shown and the carrier respectfully requests your honorable board to so find.

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 employees 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 reveals the following undisputed facts:

- 1) On January 11, 1937, Maintenance of Way forces placed in the southside section of Carrier's Sixth Street Yard an old refrigerator carbody, complete with trucks, on a disconnected 48 feet track section;
- 2) The carbody was fitted with windows, a door, porch, railings and steps by M. of W. forces and used as a Yardmasters' office;
- 3) The trucks served as a foundation for the carbody;

- 4) On June 6, 1942, Maintenance of Way forces again moved the carbody to the northside of the Sixth Street Yard and again placed it on a short section of disconnected track;
- 5) M. of W. forces renewed the porches, railings and stairs; water lines were also run into the carbody;
- 6) In 1955 M. of W. forces repaired the flooring;
- 7) In 1958 M. of W. forces repaired the porches and hand rails;
- 8) Beginning on October 21, 1959, and for several days thereafter, M. of W. forces replaced rotted siding, broken windows, and cleaned and repainted the carbody's exterior;
- 9) On August 20 and 21, 1962, as the carbody was no longer needed as a Yardmasters' Office, M. of W. forces removed the steps, porches and most of the interior cabinet work; electricians took out all electrical connections; sheet metal workers removed the plumbing; and the carbody was loaded on a flat car and sent to Carrier's San Bernardino Shop for scrapping.

The Organization contends that the Claimant, Carman C. A. Rosentreter, who has a first shift Monday through Friday assignment, should have been called to do the work performed on October 21, 22, and 23, 1961, and that the Carrier's action violated the controlling agreement because the carbody was not a permanent building.

(The Carrier contends that the carbody is, in fact, an office building and not rolling stock. Therefore, the work in question properly belonged to the M. of W. employees.)

In our analysis and evaluation of the record, we could find no support whatsoever for the Organization's position.

The Organization's claim that the Yardmasters' Office was on a spur is simply not true. The record undeniably establishes that it was on a small section of unconnected track. Even if the yardmasters' office were on a spur, it could not have been readily moved until the electrical and plumbing work had been disconnected and the steps removed.

(Again we must repeat what the Board held, in part, in Second Division Award 4604, namely, "The function or use of the equipment determines its purpose and proper nomenclature".)

Accordingly, we must dismiss the Organization's claim.

AWARD

Claim dismissed.

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.