Award No. 4709
Docket No. 4545
2-IT-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. 154, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier improperly and arbitrarily removed work from the jurisdiction of Carmen and assigned same to Machinists Craft.

2. That accordingly the carrier be required to make the Carmen whole by additionally compensating them as follows:

(a) Carmen Smith and Mushill, four (4) hours each at the straight time rate for August 3, 1962.

(b) Carmen Chosich and Davidson, four (4) hours each at the straight time rate for August 22, 1962.

(c) Carmen Bradley and Sage, eight (8) hours each at the straight time rate for September 12, 1962.

(d) Carmen Wells and Mushill, four (4) hours each at the straight time rate for September 13, 1962.

(e) Carmen Smith and Davidson, four (4) hours each at the straight time rate for September 14, 1962.

EMPLOYES' STATEMENT OF FACTS: The Illinois Terminal Railroad, hereinafter referred to as the carrier, maintains a terminal known as McKinley Junction, located between Madison, Illinois, and East St. Louis, Illinois. The terminal includes a train yard, a light repair facility for freight cars and a locomotive shop. The locomotive shop is approximately 200 yards from the train yard where carmen are employed, and is approximately 400 yards from the light repair facility where carmen work.

Carmen Smith, Mushill, Chosich, Davidson, Bradley, Sage and Wells, hereinafter referred to as the claimants, are regularly assigned as such at this point. They were off duty and available to be used on the dates and for which claim is made in their behalf.

Without receding from the foregoing, and if the board does not agree that this work belongs to the machinists' craft, it is carrier's position that Article VII of the National Agreement of August 21, 1954, which became effective on this property on November 1, 1954, gives further support to the carrier's actions in the instant dispute. Article VII of the August 21, 1954 National Agreement reads:

> "At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

By referring to Rule 31, it will be noted that carmen at Carrier's McKinley Jct Car Department are in Seniority District No. 2; whereas, locomotive department employes at McKinley Jct are in Seniority District No. 4. No Carmen are employed in Seniority District No. 4. Since McKinley Jct Locomotive Department and McKinley Jct Car Department are distinct points on carrier's system and are set out as separate seniority points in the effective agreement and since there is not sufficient carmen work at McKinley Jct Locomotive Department to assign a carman thereat, carrier has the right under Article VII to permit the machinist craft to perform the work of the carmen's craft at McKinley Jct Locomotive Department. Award No. 3677 of the Second Division.

Carrier also desires to point out to the board that at the time the disputed work was performed, claimants were fully occupied performing their regularly assigned duties at their point of seniority—McKinley Jct Car Department.

Claims of Carmen Bradley and Sage for eight (8) hours each at the straight time rate for September 12, 1963 (Employe's Statement of Claim—Part 2 (c)) are excessive as the machinists' craft spent only four (4) hours doing the work complained of and should a sustaining award be rendered Part 2(c) of employe's claim should be reduced to four (4) straight time hours for each claimant.

FINDIINGS: 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 waived right of appearance at hearing thereon.

The Organization contends that the Carrier arbitrarily removed work from Carmen "that they have been performing since railroading began and turned it over to other employes."

The Carrier states that it is within its rights in having machinists apply couplers on diesel locomotives and points to Rule 59 of the current agreement of the parties as giving it contractual authority for the action taken.

> Rule 59, in pertinent part, provides: " * * * applying all couplings between engine and tender;"

The rule is explicit in giving the work in question to the machinists' craft.

The record does not appear to contain evidence of the past practice that Carmen have been performing this work "since railroading began." The Carrier cites Award 3111 for the proposition that even if there were such a past practice it cannot be invoked to alter the clear and unambiguous language of Rule 59, quoted supra.

The principle that past practice may not be utilized to impair the plain language of an agreement is too well settled in the law of contracts to require the citation of authorities.

The Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.