

Award No. 4865
Docket No. 4811
2-CNO&TP-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

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

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement, when on September 16, 19, 21, 24, 30, 1963, and October 6, 1963, it instructed and/or authorized employees of Monnig Welding Company to weld tie down chains to Southern System cars located in Southern's Gest Street Yard at Cincinnati, Ohio.

2. That the Carrier be ordered to discontinue these violations and compensate:

(a) Carmen C. Love and W. H. Hubbert, Cincinnati, Ohio, eight (8) hours' pay each at the rate of time and one-half for September 16, 1963,

(b) Carmen W. I. Foust and W. Winkle, Cincinnati, Ohio, eight (8) hours' pay each at the rate of time and one-half for September 19, 1963,

(c) Carmen R. J. Rose and H. S. Spada, Cincinnati, Ohio, eight (8) hours' pay each at the rate of time and one-half for September 21, 1963,

(d) Carmen P. P. Puckett and D. Marshall, Cincinnati, Ohio, eight (8) hours' pay each at the rate of time and one-half for September 24, 1963,

(e) Carmen W. H. Hubbert, Cincinnati, Ohio, eight (8) hours' pay at the rate of time and one-half for September 30, 1963,

(f) and Carmen L. H. Rolsen and F. J. Tucker, Cincinnati, Ohio eight (8) hours' pay each at the rate of time and one-half for October 6, 1963.

(d) By the Association of American Railroads.

(e) By the fact that separate rental charges are made for use of the cars and automobile carrying racks riding thereon when the cars move from one railroad to another, and

(f) By the fact that Trailer Train Company did not pay for repairs made to the racks by Monnig Welding Company. (Under AAR rules if work had been performed on Trailer Train's flat cars it would have been paid for by Trailer Train.)

(4) Carrier does not own "automobile cars".

(5) No repairs were made by employes of Monnig Welding Company to any of Trailer Train's flat cars, as alleged by the brotherhood.

(6) Renewing, repairing and welding tie down chains on automobile carrying racks riding on Trailer Train's flat cars by employes of Monnig Welding Company did not constitute the "building, maintaining, * * * and inspecting * * * freight cars" or "other work generally recognized as carmen's work" within the meaning of these words as used in Rule 149 of the controlling agreement.

(7) Exclusive rights to work are not granted by the terms of the carmen's agreement.

(8) At no time have this carrier's carmen performed any work on carrier owned or leased automobile carrying racks riding on Trailer Train's flat cars.

(9) The work involved in this dispute has not been recognized as carmen's work on this carrier's property, and

(10) The fact that carmen do not have a contract right to perform work on automobile carrying racks riding on Trailer Train's flat cars was recognized by the brotherhood when on October 24, 1960 it served notice under Section 6 of the Railway Labor Act of its desire to negotiate a "Memorandum of Agreement" incorporating in the shop crafts agreement a rule conferring upon carmen the right to work on piggyback equipment.

Thus if the board properly interprets the controlling agreement in the light of the evidence of record it cannot reach any conclusion other than that the claim which the brotherhood here attempts to assert is without basis and unsupported by the agreement and 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 claims in this Docket are similar to those contained in Award No. 4864, this Division.

Carrier in its submission admits that all the flat cars listed here on which work was performed by labor not associated with the Carmen's Organization, on the automobile carrying racks. Such flat cars are the property of Trailer Train Company, and the evidence is conclusive here that no work involved here was performed on any of the flat cars owned by Trailer Train Company. The work involved was performed on carrying racks owned by Southern Railway Company.

In view of our Award in Award No. 4864, we find that claims herein, all involving automobile carrying racks owned by carrier here, should be sustained. Claims shall be paid at the applicable pro rata rate.

AWARD

Claims sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1966.

DISSENT OF CARRIER MEMBERS TO AWARD 4865

For the reasons previously set forth in our dissent to Award 4515, we dissent to the majority's decision in this case.

P. R. Humphreys

F. P. Butler

H. F. M. Braidwood

H. K. Hagerman

W. B. Jones