Award No. 4974
Docket No. 4869
2-SOU-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement when, on November 12, 1963, it instructed and/or authorized employes of O. G. Hughes and Son to repair TTX Car 477329 at John Sevier Yard, Knoxville, Tennessee.

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

(a) Carman J. O. Lay eight (8) hours' pay at the rate of time and one-half for November 12, 1963.

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Company, hereinafter referred to as the carrier, maintains at John Sevier Yard, Knoxville, Tennessee, modern facilities for the inspection, repairing and servicing of freight cars.

On November 12, 1963, at the request and/or instructions of carrier, employes of O. G. Hughes and Son, Knoxville, Tennessee, repaired by welding, the retractable trailer hitch (fifth wheel) of piggy back transport car TTX 477329 while said car was under the operating control of the carrier in its John Sevier Yard, Knoxville, Tennessee, as evidenced by copy of letter dated June 23, 1964 directed to General Chairman W. O. Hearn by Director of Labor Relations J. W. Cox.

Carman J. O. Lay, hereinafter referred to as claimant, is regularly employed by the carrier as a carman in its facilities at Knoxville, Tennessee, and was available to perform repairs to the car involved.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

container, nor is the tractor part of the container or bogie. They are all separate units of equipment just as Trailer Train's flat cars are units of equipment and trailer hitches or so-called fifth wheels are units of equipment. As indicated herein, the Brotherhood has heretofore conceded these facts.

Carrier has proven in the record before the Board that:

(1) Car TTX 477329 on which two trailer hitches or so-called fifth wheels were riding, one of which was repaired by contract on November 12, 1963, is owned by Trailer Train Company.

(2) The trailer hitches riding on the deck of Trailer Train's flat car TTX 477329, while owned by Trailer Train Company, were not part of Trailer Train's flat car.

(3) An employe of O. G. Hughes and Sons repaired the lock on one of the two trailer hitches on Trailer Train's car TTX 477329 consuming approximately 45 minutes, but definitely did not repair the car or perform any work on the car. To the contrary, all work performed was on one of the trailer hitches, not on the flat car.

(4) Exclusive rights to work are not granted by the terms of the controlling agreement.

(5) At no time have this carrier's carmen performed any work on trailer hitches on the deck of Trailer Train's flat cars.

(6) Work of the type here involved has not been recognized as carmen's work on this carrier's property.

(7) Carmen and their representatives along with the other shop craft organizations recognized by their Section 6 Notice of October 24, 1960, here in evidence, that work on piggyback equipment such as trailer hitches or so-called fifth wheels is not embraced in any rule in the controlling agreement in evidence.

(8) No rule within the four corners of the controlling agreement confers upon Carman J. O. Lay a contract right to be paid for eight hours at the rate of time and one-half rate on November 12, 1963 simply because an employe of O. G. Hughes and Sons welded a lock on one of the two trailer hitches or so-called fifth wheels on Trailer Train's flat car TTX 477329.

In view of the clear, unambiguous language of the controlling agreement and all the evidence of record, carrier respectfully requests that the Board 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.

Trailer Train Company leases to the Carrier flat cars equipped for the transportation of highway trailers and containers with or without attached chassis, and for the transportation of automobiles by means of carrying racks. The said company is obligated to maintain the cars in condition for use, and the Carrier is not authorized to make repairs without its written consent, except for ordinary running repairs to permit the loading and transportation of the freight for which they are designed.

On November 12, 1963, Carrier's master mechanic at Knoxville hired an outside firm to weld a defective lock on a tralier hitch mounted on the deck of a Trailer Train flat car in Carrier's yard. This trailer hitch is affixed to the car and constitutes an integral part of it for carriage of the freight for which it is designed and used.

Under these circumstances it is clear that this work, performed under its control and on its property is carmen's work, under Rule 149 of the Agreement, which defines as carmen's work as including "maintaining * * * and inspecting all passenger and freight cars, both wood and steel, * * *; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work, * * *," and Rule 31.

The Carrier contends that the Organization recognized its want of any claim to this work by proposing a memorandum of agreement concerning trailers in 1960, which the Carrier rejected. But that proposal related only to the placing and fitting of trailers on flat cars for transportation, and their removal therefrom; it did not relate to the work here involved, which was the repair of an integral part of the car which was necessary in order to install a trailer for transportation. Claim 1 must therefore be sustained.

Claim 2 is that "the Carrier be ordered to discontinue these violations" and compensate Claimant Lay by paying him for eight hours at time and one-half rate because this incident happened on a rest day of his regular five day assignment.

This Board has no injunctive or equitable powers and cannot direct the Carrier's further conduct of its business, nor exact penalties. It can merely decide whether the Carrier has violated the Agreement, and if so determine from the record what pecuniary damage, if any, the Claimant has suffered, and order payment thereof.

The record indicates without dispute that the welding took 45 minutes. Under the common law rules of damages for breach of employment contracts as declared by the federal courts, Claimant is entitled only to actual earnings lost according to the conditions of his employment. But he lost no regular wages because this incident occurred on one of his rest days. If he were the employe entitled to be called for this work on his rest day he might have been entitled under Rule 7 to a call of five hours at time and one-half rate. However the record does not show that Claimant was the employe entitled to a call for overtime on that day, and indicates that he was

subject to call only in an emergency. Here there was no emergency. Consequently, claim 2 must be denied.

AWARD

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1966.

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