

**Award No. 5024**

**Docket No. 4959**

**2-C&O-CM-'67**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(Southern Region)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. Under the current agreement, Carman Harry Vallette's service rights were violated on or about May 4, 1964 when denied his rights to return to his regular assignment, upon return to work after being absent account injury sustained on or about February 19, 1964.

2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to restore Carman Vallette to his regular assignment as "Groundman on the Crane Gang" in compliance with his seniority and the discrimination against him be discontinued.

**EMPLOYEES' STATEMENT OF FACTS:** Carman Harry Vallette, hereinafter referred to as the claimant, is regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its yards known as the Parsons Yard at Columbus, Ohio on the first shift, with a work week Monday through Friday, rest days Saturday and Sunday.

In December 1960 the claimant made request for the position as groundman on the crane gang, which position was made vacant due to the retirement of Carman Taylor Fields. This request was recognized and the position assigned to the claimant by assistant general car foreman, John Wetherill.

The claimant remained on said position until 1962 at which time was awarded a position in the air brake room, which position worked approximately six weeks and was abolished. The claimant again made request to return to the position as groundman on the crane, which request was recognized and was assigned to said position. The claimant remained on said position until on or about February 19, 1964 at which time sustained an injury and was absent approximately six weeks. Upon return to work on or about May 4, 1964 was not permitted to continue on regular assignment as groundman on the crane gang but, was assigned other duties and the regular assignment as groundman on the crane gang was assigned to a junior employee.

while he holds a position on the transportation yard. Furthermore, the crane has been and is now assigned on first shift only, further showing that the carrier could not now comply with Vallette's request even if obligated to do so.

This is not a money claim. Vallette is asking only that he be "restored" as groundman with the crane. Since he voluntarily bid to a third shift position on the Transportation Yard while standing for car repairer assignment on the shop track, and carrier could not now "restore" him as stated above, there is nothing for the board to decide. It is obvious that the claim is moot.

Based on the foregoing, the following conclusions are in order:

(1) No separate position of crane groundman has ever existed at Parsons which Vallette could claim.

(2) Vallette did not work as crane groundman on the basis of his seniority, but on the basis of the carrier's policy to use car repairers who desired such work as part of their duties.

(3) Vallette returned to his position as car repairer following return to work on May 4, 1964.

(4) No employee at the shop track has exclusive right to any particular work performed by car repairers.

(5) No rule supports the claim.

(6) The claim is moot since there is nothing for the board to decide, Vallette having voluntarily bid to a third shift position on the transportation yard.

On all counts the claim fails. It 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 employee or employees involved in this dispute are respectively carrier and employee 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.

From the submissions of the parties it appears that there is little dispute as to most of the facts material to this controversy. The Claimant, carman Vallette, in December, 1960, made request to work as a groundman aiding operations in connection with use of an on-track diesel powered crane during the lifting and moving of heavy objects in the course of normal car repair and maintenance. Just prior to Claimant's request, this particular work as crane groundman had been done by carman Taylor Fields who retired in December, 1960 and whose position of Car Repairer was abolished. Men who work as crane groundmen are drawn from the Shop Track force and Claimant being one of said force his request was granted and he served as groundman whenever such services were required.

At first, such work was intermittent, but early in 1964 a scrapping program was begun which caused increased demand for the services of the crane and groundmen. While working as such groundman in February, 1964, Claimant was injured and did not return to duty until May, 1964, when, despite his repeated requests he was not allowed to resume work as groundman on the crane gang, but contrary to his expressed desire was given other duties.

It seems clear from the record, that this was in nowise a matter of discrimination against Claimant on the part of Management, but solely because it was believed that due to increasing age and lessened vigor Claimant no longer possessed the requisite alertness and agility deemed necessary to handle the requested work of crane groundman with safety to himself and others.

Also on behalf of Claimant it is urged that the work of groundman on the crane gang had been assigned to him on a basis of seniority and that he had a right to such work just as if it had been a classified, bulletined job bid in by Claimant and then assigned to him. This the record does not show. The existence of a certain duty does not create a separate job classification. Quite to the contrary, here we find that work as a groundman with the crane was not a separate classification; that it had never been bulletined nor assigned to Claimant Vallette as the senior bidder in accordance with the rules. The record is clear that the job which Claimant did hold on seniority was that of car repairer and as such he could be expected to do any of the work required at the Shop Track, such as body work, wheel work, etc. Claimant had no more right to the performance of work as crane groundman than he, or any other carman, had to any other work of the craft.

While sympathizing with Claimant's desire to do the type of work he prefers, we cannot find from the record that Carrier has violated the Agreement of the parties nor in any manner dealt unjustly with Claimant. The claim must be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.

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