



Award No. 5411

Docket No. 5171

2-L&N-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the use of a Foreman to assist Carman J. D. Ballew in making repairs to and opening the door on Southern Car 13630 located at the "Pay-Cash" Grocery Company, Knoxville, Tennessee on May 31, 1965 was a violation of the controlling Agreement.

2. That accordingly, the Louisville and Nashville Railway Company should be ordered to additionally compensate Carman A. W. Spangler for four (4) hours (call) at pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Louisville & Nashville Railroad Company, hereinafter referred to as the Carrier, on May 31, 1965 assigned Carman J. D. Ballew to make necessary repairs to bent and damaged door on Southern Car 13630, before door could be opened, as requested by the "Pay-Cash" Grocery Company located within the yard limits of West Knoxville, Tennessee.

Carman Ballew was assigned said duties by Departmental Foreman A. W. Chambers.

Upon arrival at the "Pay-Cash" Grocery Company, Carman Ballew attempted to open damaged door, but soon realized that he would be unable to do so by himself, therefore, at approximately 11 A.M., he called Departmental Foreman A. W. Chambers, advising of the condition of the door and requesting that another carman be sent to assist him. (Letter dated June 21, 1965 submitted as Exhibit A).

At approximately 11:20, Foreman Higdon arrived at the "Pay-Cash" Grocery Company, whereupon he and Carman Ballew, with the aid of two chain hoists (jacks) and a 2" x 4" x 10" piece of oak timber, straightened the door guide and door sufficiently for the door to be opened. (See Employees' Exhibit A). Work was completed at approximately 12:15 P.M., after which both Higdon and Ballew returned to the shop.

The Second Division of this Board has consistently held that an organization must prove exclusive right to the work involved in a claim, before it can preclude all others from performing such work, even though the work involved is work ordinarily performed by the petitioning craft. The following Second Division awards have thus held: Awards 1110, 1808, 2250, 3015, 3170, 3283, 3287, 3387, 3544, 4171, 4172, 4259, 4464, 4530, and 4606 as well as many others of this, as well as other divisions of the Board.

The employee for whom claim is made, Carman A. W. Spangler, worked full time on his regular job and there is absolutely no evidence to show that he was available to perform the work at the time it was necessary, if he had been assigned to perform the work involved.

It is carrier's position that there has been no violation of the agreement. Therefore, lacking agreement support, and being without merit, the claim should be denied.

* * * * *

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees either in conference or correspondence.

The carrier desires opportunity to make suitable response to the employees' submission herein, but does not desire oral hearing unless requested by the employees.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

A preponderance of the evidence of record in this dispute establishes that the Foreman here involved engaged and participated in the actual work of repairing and opening the door on Southern Car 13630 on May 31, 1965, and did not, as contended by the Carrier, merely perform a small amount of mechanic's work incidental to supervising the job.

Under the factual circumstances present here, there was a violation of Rule 30 of the effective agreement. Accordingly, the claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.

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