

Award No. 5615

Docket No. 5456

2-A&S-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ALTON AND SOUTHERN RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly assigned other than Carmen to make repairs to freight cars in Davis Train Yard on November 9, 1965.

2. That accordingly, the Carrier be ordered to make the Carmen's Craft whole by additionally compensating Carman D. H. Klein in the amount of five hours at the straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Alton and Southern Railroad, hereinafter referred to as the Carrier, operates a train yard known as Davis Yard in East St. Louis, Illinois where approximately seven (7) Car Repairmen Inspectors are employed each day on each shift in the train yard.

At approximately 2:30 P. M., on November 9, 1965, Switchman Lubach removed broken parts of coupler knuckle from IC Car No. 4636 which was located on Track No. 021 and replaced it with a knuckle he had removed from the coupler of another freight car. Mr. Lubach then secured a knuckle found laying along side the Lead Track and applied it to the coupler of the car he had robbed.

Carman D. H. Klein, hereinafter referred to as the Claimant, is employed by the Carrier and was off duty and available to be used at the time in question.

This dispute has been handled with Carrier officials up to and including the highest officer so designated by the Company, with the result he has declined to adjust it.

The agreement effective January 29, 1947, as subsequently amended, is controlling.

1. The emergency replacement of knuckles is not work belonging exclusively to carmen.
2. Rule 48, upon which the employes place sole reliance, makes no mention of the emergency replacement of knuckles.
3. The emergency replacement of knuckles on this property has always been performed by switchmen, and employes other than the carmen, without any complaint from the carmen's organization.

Under the foregoing circumstances there is no basis whatever for the employes' claim and we respectfully request your Board to deny it.

(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 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.

On November 9, 1965, the foreman in charge of a switching crew assigned to coupling cars standing on track 021 in Carrier's Davis Yard at East St. Louis, Illinois replaced the defective knuckle on car IC 4636 with a knuckle he either removed from a different car on another track or found between the tracks. Petitioner contends that the Carmen's Classification of Work Rule (Rule 48) was violated as the disputed work constituted repair of a freight car, or work within the scope of Rule 48 of the Agreement between the parties. Furthermore, Petitioner urges that Article III, paragraph 1 of the September 25, 1964 National Agreement also was violated because the disputed work contractually belonged to Carmen. Claimant was not on duty, but available for call under Rule 4(c) of the applicable Agreement between the parties.

Carrier contends that the foreman in charge of the switching crew merely made an emergency repair so that the crew could continue coupling the cars on the track without interruption for subsequent delivery to connecting lines from this classification yard. Moreover, Carrier relies on earlier Awards of this Board to support its position that the work involved in this dispute does not belong exclusively to carmen either through practice or under applicable language of the Agreement. (Awards 2697 and 3581.)

The record reflects that the Brotherhood of Railroad Trainmen were duly notified of the pendency of this case and afforded an opportunity to file a submission. Furthermore, the effective Agreement between the Carrier and the Brotherhood of Railroad Trainmen was submitted in evidence and considered by the Board.

The record reveals that carmen were on duty on a continuous basis at Carrier's Davis Yard and were available to perform the disputed work.

Although Carrier urges that an emergency situation existed when the defective knuckle was replaced by the foreman, no probative evidence has been offered to sustain such a finding. Cuts of cars were being prepared for departure, and there is no evidence of any serious delays that would have resulted if a carman had been used to perform the necessary repair work.

The fundamental facts involved in this case are substantially similar to those found in another recent dispute which resulted in our Award No. 5189. The Findings therein clearly distinguished the principles involved in our Awards Nos. 2697 and 3851 from those found in the instant case. Accordingly, we find Award No. 5189 persuasive precedent in this dispute, and the claim will be sustained.

AWARD

Claim is sustained.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.