



Award No. 5719

Docket No. 5564

2-CB&Q-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. —C. I. O. (CARMEN)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier was not authorized to use carman helper to assist Carman E. A. Willsey from Murray Yard, North Kansas City, Missouri to change out a pair of wheels on Waycar No. Q-13223 at Thiehoff, Missouri, August 11, 1966.
2. That accordingly Carman L. F. Taylor be compensated eight (8) hours and thirty (30) minutes at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Carrier on August 11, 1966 sent Carman Helper J. L. Jenkins and Carman E. A. Willsey, who are regularly employed at Murray Yard, North Kansas City, Missouri, out on line of road to Thiehoff, Missouri to change out wheels on Waycar No. Q-13223.

On August 11, 1966 Carman Helper Jenkins and Carman Willsey departed Murray Yard at approximately 9:00 A.M., and upon arrival at Thiehoff, Missouri performed the work necessary in the change of wheels and upon completion of the work returned to North Kansas City, arriving there at 5:30 P.M.

Carman L. F. Taylor, hereinafter referred to as the Claimant, is regularly employed by the Carrier at Murray Yard, North Kansas City, Missouri. August 11, 1966 was one of the claimant's rest days and he was available for call.

This dispute has been handled with officers of the carrier up to and including the highest officer so designated by the Carrier, who have declined to adjust the matter.

The agreement effective October 1, 1953 as subsequently amended, is controlling.

2. This ambiguity must be resolved on the basis of the practice on the property since the rule was agreed upon in 1940.
3. The overwhelming practice, as evidenced by Carrier's Exhibits Nos. 1 and 3, is that a crew consisting of a journeyman carman, and a carman helper, has been used for all road trips under Rule 81.
4. Rule 81 must be construed to describe the craft to be used on road trips not the number of journeymen to be employed.
5. Award 4849 is palpably wrong and should not be followed in this docket.

For the above reasons, this claim must be denied.

(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.

Claimant L. F. Taylor, with Carman classification, was employed at Carrier's maintenance facility at North Kansas City, Missouri. On August 11, 1966, a rest day for Claimant, Carrier dispatched Carman E. A. Willsey and Carman Helper J. L. Jenkins to Thiehoff, Missouri, for the purpose of changing out a pair of wheels on a Waycar that had been bad ordered and left at this point, 58 miles East of North Kansas City. These two employes left North Kansas City at 9:00 A.M. and returned, after changing the wheels, at 5:30 P.M. The Organization contends that in accordance with Rule 81 of the Agreement, which is:

"When necessary to repair cars on the road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar character."

Carrier was required to send two Carmen instead of one Carman and one Carman's Helper. The Organization further contends that the word "Carmen", as used in the above Rule 81, is plural and relies on Second Division Award 4849 (Johnson) for support in this dispute. Carrier contends that said Award 4849 is in error; that the word "Carmen" in Rule 81 means the craft of Carmen as against employes of other crafts and not two or more journeymen Carmen; and that past practice has recognized that the proper crew under Rule 81 for road work is one journeyman Carman and one Carman Helper.

At the request of each of the parties to this dispute, this referee has examined the Docket File in Award 4849. This Board finds that Award 4849 is distinguished from the instant dispute in that Award 4849 involved the dispatching of a Carman and a Section Laborer (not a Carman Helper) to change out a pair of wheels. In Award 4849 the Carman and Section Laborer were assisted by a Roundhouse Foreman and a Roundhouse Laborer. This dispute involves the dispatching and use of a Carman and a Carman's Helper in the changing out of a pair of wheels.

This Board also finds that on page 8 of the Carmen's Rebuttal in Docket No. 4695 (Award 4849), the following language is contained:

"Second Division Award 3271, referred to by Carrier on pages 10 and 11 of its submission certainly cannot be construed to support Carrier's action and position in the instant case, for the reason that the sending of only one carman, when it was known in advance that two or more carmen or one carman and one helper would be needed to perform the work, did not satisfy the requirements of Rule 81." (Emphasis ours)

This language constitutes an admission by the Employees that the use of a Carman and a Carman Helper is permissible under Rule 81 of the Agreement. This Board finds that the word "Carmen" as used in Rule 81 of the Agreement means the craft of Carmen and does not mean two or more journeymen. This Board further finds that the affidavits submitted by Carrier (Carrier's Exhibits 3-A through I) will not be considered by this Board for the reason that they were not submitted or considered the property and were inserted in the record after the submission of this dispute to this Board, contrary to this Board's rules of procedure. However, this claim will be denied for the other reasons heretofore stated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.

LABOR MEMBERS' DISSENT TO AWARD NO. 5719

The dispute in the instant case grows out of the meaning of Carmen's Special Rule 81 reading:

"When necessary to repair cars on the road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar character."

The employees contend that the word "carmen" is plural and means two or more carmen are required to be sent out on the road or away from the shops to perform the work specified in the rule. (See Award 4849).

The majority in their findings quotes the following from the Carmen's Rebuttal in Docket No. 4695 (Award 4849):

"'Second Division Award 3271, referred to by Carrier on pages 10 and 11 of its submission cannot be construed to support Carrier's action and position in the instant case, for the reason that the sending of only one carman, when it was known in advance that two or more carmen or one carman and one helper would be needed to perform the work, did not satisfy the requirements of Rule 81.'" (Emphasis ours.)

"This language constitutes an admission by the Employees that the use of a Carman and a Carman Helper is permissible under Rule 81 of the Agreement. This Board finds that the word "Carmen" as used in Rule 81 of the Agreement means the craft of Carmen and does not mean two or more journeymen . . ."

The majority used the above quotation from the employees' rebuttal in Docket No. 4695 (Award 4849), involving the same railroad and the same rule, to deny the instant claim; however Second Division Award 3271, referred to above, is from the Gulf, Colorado and Santa Fe Railway and involves Rule 112 reading:

"When necessary to repair cars on road or away from shops, two carmen, or one carman and one carman helper, will be sent to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, truss rods, wheels."

It can readily be seen that the language in Rule 112 of the Gulf, Colorado and Santa Fe is entirely different from the language in Rule 81 of the Chicago, Burlington & Quincy.

It is very plain to see that in order to deny this claim the majority completely ignored the submissions in the instant case, which leaves a grave doubt as to whether the award meets the requirements of the rules of the Board, as well as statutes governing the matter.

/s/ O. L. Wertz
O. L. Wertz

/s/ D. S. Anderson
D. S. Anderson

/s/ E. J. McDermott
E. J. McDermott

/s/ Robert E. Stenzinger
Robert E. Stenzinger

/s/ Edward H. Wolfe
Edward H. Wolfe