



**Award No. 5833**

**Docket No. 5664**

**2-PRSL-CM- '69**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'  
DEPARTMENT, AFL — CIO  
(Carmen)**

**PENNSYLVANIA-READING SEASHORE LINES**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current Regulations Cocah Cleaners, R. P. Eckel, J. Rice, Jr., Joseph Fleming and W. R. Goslin were improperly denied their rights to perform work at Atlantic City, Ocean City, and Cape May, New Jersey, when Carrier assigned Car Inspectors to perform the cleaning of coaches at those points.
2. That accordingly, Claimants be made whole by the payment of wages lost as follows:
3. Robert P. Eckel, 8 hours each day at overtime rate of pay for November 22, 23, 24, 25, 26 and 27, 1966, and, for every day thereafter until this claim is adjusted.
4. Joseph Rice, Jr., 8 hours each day at overtime rate of pay for November 22, 23, 24, 27, 29, 30, December 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 1966, and January 1, 2, and 3, 1967.
5. Joseph Fleming, 8 hours each day at overtime rate of pay for November 23, 24, 25, 26, and 27, 1966, November 30, December 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 1966, January 1, 2 and 3, 1967.
6. William R. Goslin, 8 hours each day at overtime rate of pay for November 22, 23, 24, 25, 26, 29, 30, December 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31, 1966.

**EMPLOYEES' STATEMENT OF FACTS:** Coach Cleaners R. P. Eckels, Joseph Rice, Jr., Joseph J. Fleming and W. R. Goslin, hereinafter referred to as the claimants, are furloughed employes of the Pennsylvania-Reading Seashore Lines having seniority as coach cleaners with date as follow: R. P. Eckel — July 4, 1939; J. Rice, Jr., — June 10, 1942; W. R. Goslin — Oct. 29, 1942; Joseph Fleming January 28, 1943.

"4-E-1. Employees called, who report for work will be given not less than three (3) hours' work and paid as provided for in Regulation 4-C-1."

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement, which constitutes the applicable agreement between this carrier and the Brotherhood of Railway Carmen of America and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The Board has no jurisdiction or authority to take any such action.

#### CONCLUSION

The carrier has conclusively shown that there has been no violation of the applicable agreement in the instant case and that the employees have totally failed to sustain the burden of proof imposed upon them.

Therefore the carrier respectfully requests your Board to dismiss or deny the claim of the employees in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

**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 employees 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.

Claim is presented here for coach cleaners on days specified, and for compensation at the punitive rate of pay, when it is alleged by the Organization that Carrier assigned Car Inspectors to perform the cleaning of coaches at various points through-out Carrier's line. The work, it is contended by the Organization, belongs to Coach Cleaners, and as a consequence the action complained of, constitutes a violation of the effective Agreement between the parties.

Carrier in its defense relied on the National Agreement of August 21, 1954, more specifically Article VII thereof. The Organization rightfully disputed this, claiming that the Reading Line was not a signatory to this specific section. Carrier later agreed with this position. Additionally, Carrier argues that the Organization has failed to show that Coach Cleaners have the exclusive right to perform the work. Indeed Carrier had stated that past practice has incontrovertibly shown that other employees have over the years performed the work in question.

It is axiomatic that the Organization has the burden of proof in order for this board to render a sustaining award. We find no substantial evidence in this record to warrant a conclusion in favor of the Organization. We will deny the claim.

#### 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 16th day of December, 1969.