

Award No. 6012
Docket No. 5872
2-GM&O-CM-'70

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. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned Train Yard Car Inspector H. M. Talley to work on locomotives at North Side Shop at Bogalusa, Louisiana on October 7 and 9, 1968.

2. That accordingly, the Carrier be ordered to make the Carmen's Craft whole by additionally compensating Carman J. A. Brumfield in the amount of four hours at the time and one-half rate of pay for October 7, 1968, and Carman J. M. Raborn in the amount of four hours at the time and one-half rate for October 9, 1968.

EMPLOYEES' STATEMENT OF FACTS: Carmen J. A. Brumfield and J. M. Raborn, hereinafter referred to as the claimants, are employed as such on the repair track, 7:00 A. M. to 3:30 P. M. at Bogalusa, Louisiana by the Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier. The claimants were off duty and available for service at the time the violation occurred.

Prior to October 6, 1968 the carrier employed two machinists at North Side Shop to repair and maintain the locomotives operating into that point. Effective October 6, 1968, these machinists' jobs were abolished and the machinists awarded separation pay.

Carmen from the shop forces on the repair track are sent to North Shop during the day shift when they are on duty to repair and maintain the locomotives. However, when the shop force is off duty, train yard men are sent to North Shop to perform the work. On October 7 and 9, 1968 Car Inspector H. M. Talley, who is assigned to the train yard 11:00 P. M. to 7:00 A. M., was sent to the North Shop and worked on locomotives from 11:00 P. M. to 3:00 A. M. each night, for which claims are herein submitted. Each night subsequent to those dates, up to and including January 23, 1969, a train yard man was sent to the North Shop to work these locomotives. Continuous

a Machinist.' Please refer to your letter to me of February 24, 1969. In your letter you further state:

'Should we be unable to sustain our position for the Machinist rate, then we claim the least he should have been paid is the Carmen's engine carpenter's rate which is \$3.5451. We claim this rate for Mr. Talley for October 7 and 9, 1968 as a second claim.'

The Machinists requested a 'joint check' of the duties performed at Bogalusa under the provisions of Article III and IV of the September 25, 1964 Shop Crafts Agreement. Attached, for your information, is a statement of the work performed at Bogalusa on locomotives, starting at 6:45 P. M., May 21, 1969, and ending 12:00 Noon, May 23, 1969.

Yours very truly,

/s/ T. A. Steel"

The purpose in furnishing this information to the general chairman was to show the trivial amount of work performed by carmen on locomotives at Bogalusa — only two hours in a forty-one hour period. The other work performed on the locomotives was performed by a laborer.

CONCLUSION

(a) Rule 510 of the agreement makes a specific restriction that train yardmen will not be required to work on cars "not locomotives." These cars must be taken from trains to repair track "not service tracks or train yards." This rule was in effect for some forty years before it was superseded.

(b) Rule 510 was superseded by Article VII of the agreement of August 21, 1954. The undisputed facts in this case are that "there is not sufficient work (at Bogalusa) to justify employing a mechanic of each craft. . . ." The only craft employed at Bogalusa are carmen. These carmen are qualified to perform any necessary work on locomotives at Bogalusa.

(c) There is no agreement, inference or past practice that carmen employed on the repair track at Bogalusa have the exclusive right to work on locomotives at that point.

(d) The carrier has not restricted its right by contract or past practice to have carmen employed in the train yard at Bogalusa perform work on diesel locomotives regardless of where the locomotive is located. The evidence submitted to the general chairman verified by the machinists' general chairman shows that in a test period of forty-one hours, carmen performed work on locomotives during the period 6:45 P. M., May 21, 1969, until 5:00 A. M., May 22, 1969, a total of only two hours during the period of forty-one hours.

(e) This claim is an effort, by board construction, to have the contract enlarged to give carmen employed on the repair track the exclusive right to do all work on diesel locomotives at Bogalusa.

(f) The claim is not supported by the contract, past practice or common reasoning and 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 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.

This dispute arose when Carrier sent a Car Inspector to its North Shop at Bogalusa, Louisiana to work on locomotives from 11:00 P. M. to 3:00 A. M. on October 7 and 9, 1968. There were no Machinists employed at the North Shop. Carmen from the shop forces on the repair track are sent to the North Shop during the day shift when they are on duty to repair and maintain locomotives. In this instance, the shop force was off duty and Car Inspector Talley was sent to the North Shop to perform the work. The Organization relies on Rule 510 of the Agreement to support this Claim, which is:

"Men assigned to inspecting must be able to read, write and speak the English language, and have a fair knowledge of the A. R. A. Rules and safety appliance laws, and will not be required to take record for conducting transportation purposes, of seals, commodities, or destination of cars, nor will train yardmen be required to work on cars taken from trains to repair tracks."

Carrier contends that the word "cars" in Rule 510 does not encompass "locomotives"; and that the term "repair tracks" does not encompass any other type track. Carrier also maintains that under the terms of Article VII of the August 21, 1954 National Agreement, a mechanic of one craft, under circumstances contained in this dispute, may perform work of a mechanic of another craft. Article VII is as follows:

"At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

This Board must resolve this dispute in favor of the Carrier. It is concluded that when a provision in a contract specifically refers to "cars," this Board is without authority to rewrite the contract by adding the words "and locomotives." Likewise, this Board is without authority to add additional type tracks to a specific provision designating "repair tracks." Therefore, Rule 510 does not prohibit Carrier's action in this dispute. Also, Article VII of the August 21, 1954 Agreement permits the act complained of herein. This Claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.

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