

Award No. 6321

Docket No. 6077

2-L&A-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

LOUISIANA & ARKANSAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

"1. That the Carrier's use of other than Carmen (George T. Cook, outside contractor) to adjust and secure open top load at Deramus Yard, Shreveport, Louisiana, on July 15, 1969, was improper under the current agreement.

2. That, accordingly, the Carrier be ordered to compensate the following three (3) Carmen at Deramus Yard, Shreveport, Louisiana, eight (8) hours each at time and one-half rate: W. E. Brooks, C. E. Cooper, and J. R. Bird.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a heavy repair shed and running repair track and yard at Deramus Yard, Shreveport, Louisiana. Two shifts are in operation on the running repair track — 7:30 A. M. to 11:30 A. M., 12 Noon to 4:00 P. M. (7 days) and 4:00 P. M. to 8:00 P. M. and 8:30 P. M. to 12:30 A. M., Monday thru Friday. One shift is in operation in big shed 7:30 A. M. to 11:30 A. M. and 12:00 Noon to 4:00 P. M., Monday thru Friday. Three shifts of Carmen inspectors are employed 7:00 A. M. to 3:00 P. M.; 3:00 P. M. to 11:00 P. M.; 11:00 P. M. to 7:00 A. M., seven days a week.

On July 15, 1969 the Carrier contracted the adjusting and securing of a load of sheetrock on ATSF 95947, open top load on a bulkhead flat car. The contractor (George T. Cook — Smith Brothers) used three outside men to perform this work.

Deramus Shops and Yard are a Coordinated Facility of the Kansas City Southern Railway Co. and Louisiana & Arkansas Railway Company. Seniority of mechanical forces of the Kansas City Southern Railway Company, Shreveport, La., Louisiana & Arkansas Railway Co., Shreveport, La., and Louisiana & Arkansas Railway Co., Minden, La., was dovetailed.

The Agreement between the Louisiana & Arkansas Railway Co. and System Federation No. 59 (now System Federation #3), effective August 1, 1945, as subsequently amended, is controlling.

rule to support the claim same would have to fail because the work is not exclusive with carmen at other points; i.e., not exclusive with carmen on a system-wide basis.

However, the record shows (Carrier's Exhibit No. 9) that the work in dispute is not exclusive with carmen at Shreveport. There it is shown that four different firms at Shreveport during 1964-1965 performed such work for the Carrier. This information was obtained from a random spot check of bills rendered against the Carrier by outside firms for adjusting, transferring, securing, etc., loads and is representative of the usual handling of this work in the past at Shreveport. Also as part of Carrier's Exhibit No. 9 are sworn statements of two employees who attest that laborers (represented by Firemen and Oilers) have over the years adjusted or transferred loads, in closed and open top cars, at Shreveport; also that Store Department employees (Clerks) have performed such work at Shreveport. In other words, the evidence clearly shows that the work in question is not reserved to carmen by virtue of the effective agreement or the long established practice under that agreement. In the circumstances we respectfully request that claim 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 employee or employees involved in this dispute are respectfully 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.

On July 19, 1969, the Carrier contracted the adjusting and securing of a load of sheetrock on ATSF 95947 open top load on a bulkhead flat car. The car was set to tracks leased to George T. Cook at Shreveport and the work was performed by employees thereof.

The claim is premised on the assertion that "the applicable rules of our controlling Agreement have been violated." However, during the handling of the case on the property, the Employees did not cite a single rule the Carrier allegedly violated. In their submission to this Board, the Employees for the first time refer to Rule 90 as being violated. This should have been raised on the property, not before this Board.

This Board has held that the Organization must prove every element of its claim and failure to identify a specific rule is fatal to its claim. See Third Division N.R.A.B. Awards 15835 (Ives), 16663 (Franden), 17212 (Brown), and 18864 (Dugan).

The Employees contend that Carmen have the exclusive right to the work in question because of past practice. The burden of proof is upon the Employees to sustain their position and they have failed to do so. See Second Division N.R.A.B. Awards 6049 and 6054 (Harr).

From a review of the record, it is apparent that it has been the practice to assign the work in question to a variety of classes and crafts system wide.

We find that the claim must 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 14th day of June 1972.