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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6413
Docket No. 6227
2-L&N-FT-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Federated Trades)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) That under the current agreement, Mechanized Equipment Operators Paulley, Kellems, Markwell, Crump, Day, Knoop, Carder, Pike, Worthington, Arnold and Murphy, hereinafter called the Claimants, were damaged when the Louisville & Nashville Railroad, hereinafter called the Carrier, assigned clerks and clerk-laborers to operate a Raymond-Fork Lift.
- (b) That the Carrier be ordered to pay the Claimants one day's pay for each day the clerks and clerk-laborers are assigned to operate the Raymond-Fork Lift, beginning November 17, 1970 and continuing until dispute is settled.
- (c) That the Carrier properly assign the Claimants to operate the Raymond-Fork Lift.

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.

In November, 1970, the Carrier acquired and introduced into operation in its Main Shops Storeroom, located in Louisville, Kentucky, a piece of equipment called a Raymond-Fork Lift. Storeroom clerks and clerk laborers were assigned to use and operate this mechanical device in the transport of parts and materials in and about the storeroom; storage of same in bins and on shelves; and selections, removal, and gathering of same for distribution to shops and yards as and when required.

Petitioner and claimants charge that Carrier's assignment of operation of the Raymond-Fork Lift to employees other than regularly classified tractor or fork lift operators violated Rule 142 of the controlling agreement between Petitioner and Carrier.

It is noted that the Organization representing the clerks and clerk laborers intervened in support of Carrier's assignment of the work to the classifications it represents.

Rule 142 reads:

"RULE 142 - TRACTOR OPERATORS

The positions of tractor operators, with movable and stationary booms, and operators of tractors with lifting table, load luggers, motor car operators, (engaged in handling material and repair parts in shops and yards) employed in mechanical and stores departments will be covered by the rules of this agreement and will be represented by the craft to which assigned."

In Award 6266 and Awards cited therein, this Board endeavored to delineate the concepts upon which we rely in dealing with assignment of work disputes, particularly when the claims relate to the use of certain equipment.

In Award 4690 (Daly), a dispute involving the same parties, a very similar set of facts, at a different location, carefully considered and at length dealt with the problem raised in the submission before us. We found that: "2. That Stores Department employees may properly use and operate lift trucks when handling Stores Department materials around their own Shop."

Petitioner seeks to distinguish the circumstances involved herein from those entailed in Award 4690. It endeavors to impress upon us that we did not mean to include this type of lift truck therein, and that our finding was limited to "manual and/or battery powered lift trucks of the small hand-operated type". A careful review of the Award does not reveal such intent. In fact, Petitioner repeatedly states that it does not object to "the clerks and laborers operating the Raymond-Fork Lift when riding up and down on the platform of the machine to 'hand pick' parts and materials in filling orders, or in putting away stock". Thus, it does not allege that the use of the equipment by the clerks is violative of Rule 142. It further admits that Storeroom clerks and clerk-laborers properly used manual and/or battery operated lift trucks to move materials, parts and tubs containing same in and about the Storeroom. Its contention is that this new type of lift truck has obviated the need to call in, from elsewhere in the Yard and Shops, a fork-lift truck operated by one of the claimants to perform lifting and movement of goods which the smaller equipment was incapable of doing. It cannot be held that this was not adequately covered by the above quoted findings in Award 4690 and we cannot hold that the introduction of new types of equipment to perform the permitted functions was in anyway restricted therein.

Third Division Award 10911 sets forth the fundamental rule applicable hereto as follows:

"When the Division has previously considered and disposed of a dispute involving the same parties, same rule and similar facts presenting the same issue as is now before the Division, a prior

decision should control. Any other standard would lead to chaos.

... in the absence of any showing that (previous) Awards are patently erroneous (and no such showing was made) we must follow them ..."

(See Second Division Award 6109)

Petitioner does not endeavor to have the ruling in Award 4690 declared erroneous. Its authority remains in full force and effect and precludes our sustaining the claim herein.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of January, 1973.