

Award No. 699

Docket No. 670

2-C&S-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That in violation of current agreement Rules 44 (b) and 62 (b), the carrier assigned Carman Helper R. T. Stough to relieve and perform Car Inspector C. C. Shaw's work at the close of his shift on November 29, 1940, and subsequent thereto in the train yard at Trinidad, Colorado, and that Car Inspector C. C. Shaw be compensated at the punitive rate for each hour and each day that Carman Helper R. T. Stough relieved Shaw and resumed the inspection of inbound and outbound freight cars.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. C. Shaw has been employed by The Colorado & Southern Railway Company as car repairer and extra car inspector since on or about October 7, 1922, to August 19, 1939, at which date Mr. Shaw was cut off on account of reduction in forces. After August 19, 1939, he was assigned to relieve car inspectors in train yard four shifts per week. On Fridays and Saturdays his regularly assigned hours were as follows: 8:00 A. M. to 12:00 Noon; from 1:00 P. M. to 5:00 P. M. On Monday and Tuesday nights his regularly assigned hours were 6:00 P. M. to 11:00 P. M. and from 12:00 midnight to 3:00 A. M.

Mr. R. T. Stough was employed as carman from July 16, 1934, to about June, 1935. He was then assigned to position as A. A. M. operator (locomotive carpenter) on account of the death of a Mr. Dan Delaney. This assignment was contested by Mr. C. J. Snyder, who, by decision of the National Railroad Adjustment Board, Second Division, about November 1, 1936, displaced Mr. R. T. Stough. Then on December 17, 1936, Mr. Stough was given position as laborer and held such position until August 10, 1938, at which time he was given a car helper's position, formerly held by Juan Duran. There is one carman, C. J. Snyder, and one helper, R. T. Stough, on repair track from 9:00 A. M. to 6:00 P. M.

On September 19, 1939, in reduction of force, the repair track foreman, three carmen, and one helper were layed off. They have never been regularly employed since that date but have been used only occasionally, but they are all available.

POSITION OF EMPLOYEES: It is our contention that Rule 44 (b) and Rule 62 (b) have been violated, which read in part:

"Rule 44 (b) Mechanics, regularly employed as such, shall do work specified as that to be assigned to fully qualified mechanics. This, however, does not apply to work not requiring the skill of a fully qualified mechanic."

As we were unable to reach an agreement in the disposition of this claim, the general chairman asked if we would be willing to join in a joint statement of facts and submission of this case to the Second Division of the National Railroad Adjustment Board. We replied that we were agreeable to joining in the submission, and requested the general chairman to submit a proposed joint statement of facts for our consideration. The general chairman submitted the following proposed joint statement of facts:

"JOINT STATEMENT OF FACTS: Mr. Shaw holds seniority as Carman and on November 29, 1940, was performing inspector's work, 8 a.m. to 12 p.m. from 1 p.m. to 5 p.m. Mr. Shaw, after performing his regular working hours, was relieved from duty, and car helper. Mr. R. T. Stough, was sent from repair track to inspect inbound and outbound freight trains from the hours 5 p.m. to 6 p.m. and has performed such services on several subsequent dates.

Rule 62 of the agreement between the Colorado & Southern Railway Company and System Federation No. 140, Railway Employees' Department, mechanical section thereof reads as follows:"

Following the above quotation, Rule 62 was quoted in its entirety. At the end of this proposed submission appeared the following:

"POSITION OF EMPLOYEES: That the Company in refusing to pay the regular rate of pay has violated Rule 62."

We requested that in the proposed joint statement of facts as submitted by the general chairman, there be added after "Mr. R. T. Stough" the following phrase:—"Who holds seniority as Carman." The general chairman was not agreeable to our proposal. We, therefore, proposed a joint submission with each side making their own statement of facts. We heard nothing from this last proposal.

In the proposed submission to your Board, you will note that the general chairman in the proposed joint statement of facts quoted Rule 62 and also contended that the company in refusing to pay the regular rate of pay had violated Rule 62 and this was the general chairman's contention in his various conferences with the carrier's representatives.

As previously shown, we did pay R. T. Stough the rate of pay as provided in Rule 62 while he was performing work enumerated in paragraph (b) of that rule.

We request that your Board decline this claim for the reason that R. T. Stough, who holds seniority as a freight car repairer, was paid freight car repairer's rate of pay during the time he was used as a freight car repairer, and that it was proper to use R. T. Stough for the reasons previously mentioned.

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.

The parties to said dispute waived right of appearance at hearing thereon.

The evidence of record supports the conclusion that the agreement was violated in the use of Carman Helper R. T. Stough to perform car inspector's

work under the circumstances related in the submission. However, it is impossible to determine from the record the amount of compensation due the claimant.

AWARD

Claim sustained to the extent indicated in findings and case remanded to the parties to determine by agreement the amount of compensation due claimant.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1942.