

Award No. 766

Docket No. 737

2-T&P-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: A—That the carrier is and persists in violating Rules 21 and 82 of our agreement by using Bennie Cleveland, who is classified as a car foreman and wrecking foreman to perform carmen's work at Toyah, Texas.

B—That Carmen G. S. Hawthorne, J. A. Gains, J. C. Yates and C. V. Oliver, the four carmen now employed at Toyah, Texas, be compensated at rate of time and one-half from September 15, 1941; that is, two of the above-mentioned carmen should be paid daily for the first and second shift worked by Car Foreman Cleveland. We request that the time be equally divided among the four carmen in accordance with Rule 2 (c) and Rule 2 (k) of current agreement.

EMPLOYEES' STATEMENT OF FACTS: At Toyah, Texas, we have four carmen and one car foreman employed at this point from 7:00 A. M., to 3:00 P. M. Carman G. S. Hawthorne and Car Foreman Bennie Cleveland work together. The trains that come in on this shift are inspected jointly by Car Foreman Cleveland and Carman Hawthorne, and on the second shift, which is 3:00 P. M. to 11:00 P. M., Car Foreman Cleveland works in conjunction with Carman J. C. Yates in inspecting and repairing cars. Car Foreman Cleveland is being worked from 12 to 16 hours per day and is taking the place of two carmen. On the third shift at Toyah, we have two carmen working together from 11:00 P. M. to 7:00 A. M.

POSITION OF EMPLOYEES: That Car Foreman Cleveland is taking the place of two carmen, in violation of Rules 21 and 82, of current agreement Rule 21 (a), reading as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed."

This rule is plain that foremen are not to perform mechanics' work at points where mechanics are employed. And we now have four carmen employed at Toyah, Texas. Rule 82 is a special rule of the carmen's craft which reads in part as follows:

"Carmen's work, including regular and helpers apprentices, shall consist of building, maintaining painting, upholstering and inspecting of all passenger and freight cars, both wood and steel."

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 were given due notice of hearing thereon.

The evidence of record shows that carmen are employed at Toyah, Texas, and Wrecking Foreman Bennie Cleveland, not employed as a carman, was being used to do some work included in Rule 82 of the agreement, such as repairing and inspecting cars.

The record does not disclose the amount of carmen's work performed by Wrecking Foreman Bennie Cleveland.

AWARD

A—Wrecking Foreman Bennie Cleveland shall not be used to perform work prescribed in Rule 82 of the agreement.

B—The question of such compensation as may be due is remanded to the parties for disposition through negotiation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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