

Award No. 859
Docket No. 815
2-NC&StL-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 83, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS
RAILWAY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That on and since August 17, 1940, at Atlanta, Georgia, the carrier did and persists in violating the June 1, 1940, agreement and Rules 24, 47 and 124 thereof, and the June 20, 1940 agreement and paragraphs 1 and 2 thereof by—

- (a) Using Laborer George Traylor on the 3 P.M. shift in place of Carman Helper R. L. Collins on August 17, 1940.
- (b) Using laborers as spare or extra helpers since August 17, 1940.

2. That in consideration of the aforesaid violations, Carman Helper G. L. King be additionally compensated on August 17, 1940, for eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: R. L. Collins, regularly assigned car oiler at Union Station, Atlanta, Georgia, with the permission of his foreman, laid off from his regular shift (3 P.M. to 11 P.M.) August 17, 1940.

George Traylor, regularly assigned laborer at Hills Park, Georgia, and whose regularly assigned hours were from 7 A.M. to 3 P.M., was used to fill the vacancy created by R. L. Collins laying off.

There were no helpers furloughed.

G. L. King worked his regular shift (7 A.M. to 3 P.M.) on August 17, 1940, and was relieved by George Traylor, and was, therefore, available and willing to protect the work on the 3 P.M. to 11 P.M. shift.

POSITION OF EMPLOYEES: To fully understand the justification of the employees' claim the rules of two separate agreements, neither of which is in conflict with the other, and neither of which, separately and independently of each other, sustains the employees' position, must be considered, i. e., the agreement between System Federation No. 83, Railway Employees' Department, A. F. of L. and The Nashville, Chattanooga & St. Louis Railway, effective June 1, 1940, and the agreement between the same parties, covering the working of extra men, effective June 20, 1940.

With respect to the agreement effective June 1, 1940, Rule 24 reads in part:

As a matter of fact, while the instant case originated locally at Atlanta during August, 1940, the general chairman did not appeal from the decision of the local officials of the carrier until October 29, 1941, on which date he first addressed the superintendent of machinery in connection therewith. It is significant that this appeal was made after Award 635 was rendered under date of June 26, 1941. Admittedly the local committee at Atlanta was not familiar with the negotiations leading up to the adoption of Rule 47 as said committee did not participate in the negotiations, and the general chairman's silence for more than a year would indicate that he was in accord with carrier's application of the rule, and that because of Award 635, although based on an entirely different rule, an effort is now being made to set aside the purpose and intent of the rule as understood both by management and committee at the time the rule was agreed to.

If and when this case is docketed, the carrier respectfully requests that an oral hearing be granted and that it be permitted at said hearing to submit a brief answering in detail the employes' ex parte position in this case, copy of which has not yet been furnished the carrier.

This carrier also reserves the right to introduce and examine witnesses in support of its position in connection with all issues in this case and to cross-examine witnesses who may be introduced by the petitioner, as well as to answer any further or other matters advanced by such petitioners in relation to such issues, whether oral or written.

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 record covering the instant case shows that Helper George L. King worked his regular shift, 7:00 A. M. to 3:00 P. M., on August 17, 1940, and that George Traylor, regularly assigned laborer, also worked the same shift on the same day, 7:00 A. M. to 3:00 P. M.

Helper R. L. Collins was permitted to lay off from his regular shift, 3:00 P. M. to 11:00 P. M., also on August 17, and Laborer Traylor was doubled over on the second shift, 3:00 P. M. to 11:00 P. M., taking the place of Helper Collins.

Obviously Helper G. L. King had prior rights to that of a laborer to double over on helper's work.

In the particular circumstances shown in the foregoing, the claim of the employes must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1942.