

Award No. 913

Docket No. 827

2-Alton-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE ALTON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement and Rules 28, 29 and 144 thereof, at Venice, Illinois, repair tracks—

- (a) The reconditioning of car loads such as jacking, blocking, staking and wiring securely products to place on cars, is work of carmen.
- (b) The carrier arbitrarily transferred the performance of said work to other than carmen.
- (c) Retroactive to May 24, 1941 the two senior furloughed carmen are entitled to be compensated for all time lost.

EMPLOYES' STATEMENT OF FACTS: A description, in part, of carmen's work which was performed on the Venice repair tracks by other than carmen between April 24 and May 16, 1941, follows:

Frisco 95537, two large castings jacked to place, stakes applied, blocking replaced and nailed.

SP 27726, door protection boards applied to keep bales of cotton away from doors.

GM&O 90527, binder wire applied to a load of poles.

M&O 70431, binder stakes applied to a load of poles.

B&O 255783, load of pipe jacked to place, stakes straightened, tension bands tightened.

M&O 70327, load of poles jacked to place.

Reading 7283, load of pipe jacked to place, stakes straightened.

Frisco 95787, binder stakes and wire applied to a load of poles.

M&O 70257, stake wedges applied to a load of poles.

GN 65484, tanks jacked to place and blocking renailed.

M&O 70033, tension bands tightened on a load of poles.

The carrier believes that because the facts and circumstances prevalent in cases covered by Awards 32, 33, 682 and 808 by your Board were in many respects analogous to the instant case, these awards by your Board have a bearing in this dispute and support the position of the carrier.

The Findings of the Third Division of your Board in Award No. 1689, with Sidney St. F. Thaxter, Referee, sitting as member of the Board, also have a direct bearing in this case. The carrier is quoting the applicable part of the Findings of the Board in that case:

"It appears that bulletins for various clerical positions such as Line Desk Clerk, Yard Clerk, Night Baggage Clerk, General Clerk, and Chief Yard Clerk at different points in Texas, such as Corpus Christi, Austin, Taylor, San Antonio, Houston, Victoria, Robstown and Kingsville have called for the weighing of cars as part of the work to be performed. This evidence is undoubtedly significant as showing that this work at a number of important places has been done by the clerical force. But the question still remains: Does this work belong exclusively to that force? The most important evidence on this point is that the record before us shows that for a period of at least sixteen years at Beaumont without any protest on the part of the employes this work had been performed by those not covered by the Agreement. Protest was first made in April, 1940, by J. L. Dyer, General Chairman. This was only five months before the effective date of the present Rules Agreement. We cannot overlook the fact that the Carrier and the Committee, with a full knowledge of all the facts before them and the pending controversy undoubtedly fresh in their minds, failed to mention in their Agreement the position of 'weighmaster' as belonging to the employes covered by the Agreement or that the work of weighing cars was the exclusive province of those covered by its terms. We must hold that the Agreement was entered into with full knowledge of the long established practice at Beaumont."

The Findings of the Board in this case are quite pertinent to the instant case for the reason that although some of the work involved in the dispute was performed by carmen at some other points, it had not for twenty-five years or more been performed in the Venice-East St. Louis territory by other than contractors, which fact was well and intimately known to the employes.

There is also the further fact, as proved by the carrier, that even at all other points on the carrier's lines some of the work involved had been for many years performed by other employes than carmen, which also was well known to the employes. The several agreements with the carmen were entered into with the full knowledge of these conditions and without disturbing them.

The carrier has hereinbefore stated, and now repeats, that no evidence or proof was submitted by the employes in support of their contention that the work in dispute had been performed by carmen and, using the employes' own language, that "The carrier arbitrarily transferred the performance of said work to other than carmen." If any such alleged evidence be now submitted by the employes in their presentation to your Board, the carrier maintains that it should not be admissible or that, if found to be admissible, the carrier reserves the right to make further reply thereto.

It is the position of the carrier that the claim of the employes is not supported by applicable rules or past practice and that it is without merit and should 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 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.

Under the facts of record it cannot be found that the work upon which this claim is predicated is work "generally recognized as carmen's work" within the meaning of Rule 144 of the existing agreement.

The claim, therefore, finds no support in the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.