

Award No. 940
Docket No. 875
2-D&RGW-CM-'43

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: That the controlling agreement, effective September 1, 1940, and Rules 15 and 97 thereof have been violated by:

The carrier arbitrarily assigning Coach Cleaner Dan Yacovetta to position of private car coach cleaner without complying with the provisions of Rule 15 of the controlling agreement, dated September 1, 1940.

That in consideration of the aforesaid violations the carrier be ordered to:

1. Comply with the provisions of Rule 15 of the controlling agreement and "advertise for bid" the position of private car cleaner vacated by Coach Cleaner G. B. Alford, August 8, 1942.
2. Compensate the successful bidder the difference between the monthly rate of \$149.49 and that which he has earned retroactive to August 8, 1942, account of being arbitrarily deprived of work rightfully belonging to him by contract.

EMPLOYEES' STATEMENT OF FACTS: Mr. G. B. Alford, classified as a coach cleaner and carried on the coach cleaners' seniority roster at Burnham as such, with a seniority date of June 8, 1911 prior to August 8, 1942, was regularly assigned to taking care of private cars and has been for a number of years.

His duties consist of cleaning the interior and exterior of these cars, checking supplies and equipment and making the necessary replacements. Rate of pay, \$149.49 per month.

On August 8, 1942, this position was permanently vacated account of Coach Cleaner Alford retiring from the service on pension. The position was filled by the carrier arbitrarily assigning Coach Cleaner Dan Yacovetta without posting the usual bulletin advertising "for bid" this position to other coach cleaners.

Coach Cleaner Dan Yacovetta is carried on the coach cleaner seniority roster with a seniority date of July 3, 1937.

On August 8, 1942, there were thirteen coach cleaners in the service who were senior to Yacovetta.

established for the corresponding class of employes coming under the provisions of this agreement, on the basis of three hundred and sixty-five (365) eight hour days per calendar year. The monthly salary is arrived at by dividing the total earnings of 2,920 hours by 12. No overtime to be allowed for time worked in excess of eight hours per day; on the other hand, no time is to be deducted unless the employe lays off of his own accord.

(b) If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salary for these positions may be taken up for adjustment.

and these rules have no application to or bearing on the position of business car cleaner, and in view of the fact these two rules—which are the only rules—covering monthly rates of pay—have no bearing on or application to the position of business car cleaner, it is obvious, therefore, the job does not come within the provisions of the agreement, and that Rules 15 and 97 have no bearing on the instant claim.

As heretofore stated, Mr. Yacovetta was placed on the position of business car cleaner May 5, 1942. The first notice the carrier had of any protest being made in connection with this case was the local chairman's letter of August 12, 1942, to the general car foreman. Assuming but not conceding that the position involved does come within the scope of the agreement, the organization is again out of court by reason of the provisions of Paragraph (A) of Rule 31—the grievance rule—reading:

(a) Any employe subject to this agreement, believing that he has been unjustly dealt with, or any provisions of this agreement has been violated, the case shall be taken to the foreman, general foreman, Master Mechanic or Shop Superintendent, each in their respective order by the duly authorized local committee or their representative within ten (10) days. Grievances involving monetary consideration come under the provisions of this paragraph.

due to the fact the grievance was not presented within the ten day limit from May 5, 1942.

The carrier contends in this case:

1. That the position of business car cleaner does not—and it has so proved—come within the provisions of the current agreement with the federated shop crafts, and
2. That the grievance was not progressed within the ten day period as provided by Rule 31,

therefore, the claims 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.

The facts of record justify the conclusion that the position of "Private Car Cleaner" is in reality a coach cleaner and comes within the scope of the current agreement; the class of work and wages paid for this position is such that it should have been filled in accordance with the provisions of Rule 15.

AWARD

The so-called position of "Private Car Cleaner" shall be bulletined and filled in compliance with the provisions of Rule 15.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of July, 1943.