

Award No. 1146
Docket No. 1078
2-Clinch.-CM-'46

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the assignment of Hostler John Ford as a car inspector on the 2 A. M. to 10 A. M. shift effective December 4, 1944, was not proper or authorized under the current agreement.

2. That Carmen J. B. Roberts and J. L. Spradlin are each entitled to have equally divided among them at the time and one-half rate all the time worked on the 2 A. M. to 10 A. M. shift by Hostler John Ford as a carman retroactive to April 23, 1945, less any amount they may have earned during the hours of 2 A. M. to 10 A. M. while John Ford was working the same hours.

EMPLOYES' STATEMENT OF FACTS: The carrier employed John Ford at Praise, Kentucky, on or about January 10, 1937, as a hostler, in which capacity he remained continuously until December 4, 1944, when he was assigned as a car inspector on the 2 A. M. to 10 A. M. shift in the Elkhorn Yard, seven days per week, whereat he is still employed.

Car Inspector J. B. Roberts was employed on the 1 P. M. to 9 P. M. shift; Car Inspector J. L. Spradlin was employed on the 6 P. M. to 2 A. M. shift, and Car Inspector Childers was employed on the 1 A. M. to 9 A. M. shift, each seven days per week.

This dispute has been handled in accordance with the current agreement, effective January 1, 1937, and with the carrier's highest designated officer to whom such matters are subject to appeal, on more than one occasion, with the result that this carrier officer has declined to adjust this dispute.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 60, reading—

"Any man who has served an apprenticeship or has had four years practical experience at Carmen's work, and with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner, shall constitute a Carman."

John Ford did not have on December 4, 1944, the required four years' practical experience at carmen's work as referred to in the rule or as defined in Rule 61 and Rule 63, and the carrier has failed to adduce any proof to the contrary.

Further, in accordance with Rule 18, in part reading—

"None but mechanics, leading men, and apprentices shall do mechanics' work as per special rules of each craft."

"None but mechanics, leading men, and apprentices shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. This rule does not prohibit foremen in the exercise of their duties, or in emergencies to perform work."

There was no violation. Ford was, and is, a mechanic, as had been demonstrated by his ability to do mechanics' work.

Carrier's interpretation of this paragraph is that no one shall be permitted to do mechanics' work unless he is classified and paid as a mechanic while doing such work. This is one of the general rules, and applies to each of the crafts included in the agreement.

Carrier again calls attention to the small force at Elkhorn City, as set out in carrier's statement of facts. It will be noted that on the roster at that point there are no carmen other than the car inspectors, and that the other men on the rolls are car repairer helpers, hostlers, hostler helpers, and one laborer. This confirms the statement that the employees at that point are combination men, and do such work as may be needed from time to time. There is no question of seniority involved. No employee made claim to the position, and if Mr. Ford had not been available it would have been necessary to go outside of carrier's employees to seek for a capable man. In the statement of facts a case is cited where another vacancy occurred in the position of car inspector at Elkhorn City, and, there being no employee with the necessary experience available, and the organization chairman having none to suggest, carrier employed a man from a neighboring railroad.

It is repeated that John F. Ford has the qualification required by Rule 60, and his promotion to car inspector was in every way according to the agreement and the interpretations thereof concurred in by the employees through long established custom, and that said Ford should be permitted to retain his present position. If he is not permitted to retain said position a great hardship will be worked on him, because he will not be permitted to return to his former classification of hostler and hostler helper, the firemen's organization stating that he cannot return to his former classification.

Carrier further states that the claim of J. B. Roberts and J. L. Spradlin or B. H. Childers, for overtime, cannot be sustained because there is no provision in the agreement which will require, or entitle them to, the payment of overtime for the work done by Ford since his employment as car inspector. Rule 6, which we understand the employees will invoke, does not apply in this case, but only provides that overtime shall be divided as nearly equally as possible. If Ford had not been employed in his present position, the job would probably have been left vacant until such time as another qualified man could have been found, and in the meantime only such overtime would have been worked as would have been absolutely necessary. There is no reason why it should be claimed by the organization that Roberts and Spradlin should be paid for this alleged overtime which they did not work, and not having performed any service or any overtime, they should not now be entitled to any payment for the work performed by Ford. Carmen J. B. Roberts and J. L. Spradlin have not been injured and it would not have been practical for either or both of these men to have doubled over and worked an additional shift night after night. It is probable that some other arrangement would have been made if the job could not have been filled. The place might have been filled by someone else who was not in the railroad service and who is unknown. There is no reason why it is assumed that Roberts and Spradlin should be paid for this claimed time which they did not work. Why not assume that the time would have, if

necessary, been divided among the other carmen at that point? As information, carrier states that Carman Spradlin left the service of the railroad some five or six weeks prior to this presentation, and is not now an employee of the carrier.

Carrier contends that there has been no violation of the agreement, and respectfully requests that the complaint be dismissed.

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 of hearing thereon.

The language of Rule 60 is sufficiently explicit. The record presents no proof of Ford's qualifications to perform the work of a carman.

Claim for compensation disallowed without prejudice to other or future claims.

AWARD

Claim 1 sustained.

Claim 2 disposed of in accordance with last paragraph of above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1946.