

Award No. 1154

Docket No. 1088

2-MP-CM-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Locomotive Carpenters V. C. Verstraete and W. V. Bickel be each additionally compensated in the amount of four (4) hours call pay for carmen's work performed on Cab MPX 217 by other than employes subject to the current agreement on May 13, 1944.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains at Kansas City, Missouri shops, a tire turning machine for the purpose to turn tires on locomotive driving wheels. Machine is housed within a cab which is officially identified as MPX 217 and when originally built at Little Rock shops it was fully equipped with U. S. standard safety appliances including two 80 Cap. arch bar trucks with brake beams so that it could pull the locomotive back and forth while turning the tires, it receiving its steam power from the locomotive. Subsequent to being put in to service at Kansas City it proved unsatisfactory and it was decided to anchor machine at west end of track, anchorage consisting of strap iron anchors from steel underframe to rails and, in addition, two large steel cables attached to rear end sill and then to a concrete foundation or "dead-man" located some 20 feet back of machine.

The cab structure, being much like a pile driver cab, consists of 3" angle iron welded to the underframe (which is very similar to a locomotive tender tank frame) and riveted together at top plates with the carlins. Sides and end of cab are finished with 3 1/4" car siding, has a mule-hide paper roof same as generally used on cabooses.

On May 13, 1944, cab was partially remodeled by enlarging windows, applying door and window awnings, as well as such other repairs needing attention. To make the foregoing repairs two bridge and building carpenters were employed to perform the work between the hours of 8 A. M. and 4 P. M. on May 13, 1944. The local committee of carmen immediately protested to Assistant Master Mechanic Walker that it was improper and contrary to the controlling rules of wage agreement to assign bridge and building employes to make repairs to Cab MPX 217. There was no adjustment made and consequently the bridge and building employes were permitted to complete the repairs to this cab.

The next day, May 14, the local committee again conferred with and presented time claims to Assistant Master Mechanic Walker in favor of

in accordance with the provisions of the controlling agreement. The claim is at punitive rate for work not performed, the right to perform which work is the subject of a jurisdictional dispute the background of which justified the carrier in following the course it did in fact follow in this case. The carrier found itself "between the devil and the deep sea", so to speak; regardless of which group of employes performed the work the carrier was confronted with a claim from the other. In the light of the past practices prevailing in regard to the performance of this work by bridge and building employes and in view of the character of the structure involved the carrier would certainly not have been justified in doing other than as it did in this case and there is certainly no justifiable ground for penalizing the carrier by requiring it to pay employes, who were otherwise fully employed, at the punitive rate for services they did not perform. That the officials of the organization realize the weakness of their position is evident from the fact they allowed the claim to lie dormant for a period of fifteen months after an outright declination by the carrier.

The claim should in all respects 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.

Was this structure a building, the work on which would belong to the employes of the Bridge and Building Department, or was it a car or cab as alleged by the claimants?

We feel that this structure had lost its identity as a cab and that the work done on it did not belong to the claimants.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1946.