

Award No. 1502
Docket No. 1396
2-AT&SF-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and
in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
SYSTEM (Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYES: 1. That removing and applying car doors, couplers, truck frames and wheels in connection with building and maintaining freight cars or the dismantling thereof for repairs, is carmen's work under the current agreement.

2. That it is improper, under the current agreement, to assign other than carmen to operate derricks to assist carmen in performing the aforesaid work.

3. That accordingly the carrier be ordered to assign carmen to perform the aforementioned work in Items 1 and 2 hereof.

EMPLOYES' STATEMENT OF FACTS: At Argentine, Kansas, the carrier maintains facilities in the car department for building, maintaining and repairing freight cars, including a force of approximately 300 carmen, carmen apprentices and carmen helpers.

The carrier operates in this department, two self-propelled derricks, both by gasoline, to lift car doors, couplers, truck frames and wheels and other similar work to expedite the duties of carmen assigned to building, maintaining and dismantling cars for repairs.

Since early in 1949 the derrick in the Bowl yard repair track has been operated by Ocie Cripes, (rate of pay unknown) who is covered by the Brotherhood Railway Clerks' agreement.

The derrick on the old repair track is operated by Carman Helper E. H. Dramnan, who is working under the shop crafts agreement dated August 1, 1945. They are not carmen at Argentine.

The agreement effective August 1, 1945, and subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted to be, as described in the foregoing statement of facts, indisputable that these derrick operators are

(b) to assign carmen to operate derricks to assist carmen in performing the work described in the preceeding item (a).

As to item (a): There is and has been no dispute between the parties as to the work described in this item (a) as being work properly belonging to carmen. Such work is being and has been performed by carmen. Any statement to the contrary is based on pure fabrication.

As to item (b): The machine in the "Old Repair Yard" at Argentine, Kansas, which the carmen's Brotherhood is contending should be operated by a carman instead of a carman helper, is not a derrick. It is a Krane Kar, i.e., a mobile boom-crane truck. The operator of this Krane Kar is a carman helper, classified and paid as such, in accordance with shop crafts' Rule No. 104 and the Wage Appendix of the Shop Crafts' Agreement, effective August 1, 1945. The Second Division has no authority to order the carrier to assign a carman to operate this Krane Kar in direct contravention of a mutually agreed upon rule which provides, without ambiguity, that carmen helpers shall operate such machines.

The provision of the agreement that boom-crane trucks shall be operated by helpers of the crafts (carmen's craft in this instance) is consistent with the practice generally in effect on this property of having helpers operate lifting cranes used for conveying heavy materials from one location to another and for lowering parts from locomotives and cars when being dismantled for repairs or lifting such parts when locomotives or cars are being repaired or rebuilt. For example, the operation of overhead traveling cranes has, by agreement, been recognized as the work of electrician helpers to the same extent that the operation of mobile boom-crane trucks has been recognized by agreement as the work of regular helpers of the different crafts. The former is specifically covered by Rule 97 of the electricians' special rules, which reads:

"Rule 97. Operators of traveling overhead electric cranes of less than forty (40) ton capacity, will be selected from electrician helpers and, if full time assignment necessary, will be regularly assigned. Operators of such cranes will clean and lubricate them. They will be paid thirteen cents (13¢) per hour above the minimum rate paid electrician helpers at point employed."

The operators of the traveling overhead cranes in certain instances perform identical operations involved in the present dispute, in that crane operators move the crane from one location to another to pick up a pair of trucks, a car door, a car side and roof, etc., conveying it to the location where the repairmen are assembling the car and set the material in the proper place or hold it in place which the carmen, assisted by a helper or apprentice, set the parts into proper place and temporarily fasten them, preparatory to riveting. There have never been any restrictions as to the use of overhead traveling cranes in handling this work and obviously there can be none, either in respect to the use of traveling overhead cranes or the use of mobile boom-crane trucks without nullifying and avoiding the appropriate rules of the agreement themselves.

In conclusion, the carrier respectfully requests the Second Division to dismiss the instant dispute for lack of jurisdiction on the grounds that the instant dispute does not contain either the elements of a dispute growing out of a grievance or involving a question which requires the interpretation or application of an agreement or an agreement rule.

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 carrier has facilities in its Car Department at Argentine, Kansas, for the building, maintaining and repairing of freight cars. In performance of the work, principally for the purpose of making heavy lifts, it uses two mobile boom crane trucks, now operated by carman helpers working under the current Shop Crafts Agreement, to assist and expedite the duties of carmen and apprentices regularly assigned to building, maintaining and dismantling such cars.

Inasmuch as the all decisive question to be here determined is whether the work of operating a mobile boom crane truck hereinafter in the interest of brevity referred to as a crane truck, may properly be assigned to a carman helper during the time he is engaged in assisting carmen with their work we deem it necessary, even though it results in encumbering our findings, to definitely establish the nature of the operations resulting in work the organization contends is performed by carmen helpers in violation of the current agreement, notwithstanding all such work is performed under the direction and supervision of a carman or apprentice and the helper operating the crane truck does not leave his seat on the truck. In the main such operations can be described as follows:

(1) In removing a car door, carmen (the term as hereinafter used including carmen, apprentices or carmen helpers not here in question) remove the door stops and slide the door back to the end of the track where the crane truck holds the door while it is pushed completely off the track. In applying a door it is lifted to the proper height by the crane truck.

(2) In applying the coupler the crane truck lifts the coupler up to the desired height. Carmen guide it into place and secure it to the car. The crane truck is not used in removing such equipment from a car.

(3) In removing a truck frame all required work is performed by carmen, the only use made of the crane truck being to remove the frame after it has been dismantled. In applying a truck frame the crane truck is utilized for bringing such frame and lifting it to the proper place, all work of securing the device to the car being performed by carmen.

(4) In removing a pair of wheels the wheels are completely removed from the truck and rolled free of the truck side by carmen. Thereafter the crane truck removes the wheels from the track and places them where they may be sent to the wheel shop.

(5) In addition the crane truck is used to move the end straightening device, the wheel changing device, and heavy material needed for repairs to cars from one location to another.

At the outset it must be conceded that the building, maintaining, and dismantling for repairs of freight cars is carmen's work. Likewise admitted that the very work heretofore described could properly be performed by mechanics of their craft. This is evidenced by pertinent portions of Rule 102 of the current agreement which read:

"Carman's work shall consist of building, maintaining, dismantling for repairs . . . all passenger and freight cars, both wood and steel . . .; and all other work generally recognized as carmen's work."

However, it does not follow from what has just been stated that carmen have the exclusive right to perform all the work which they might properly perform under the provisions of Rule 102. Rule 104 of the same agreement unequivocally provides that carmen helpers are "employees regularly assigned to help carmen and apprentices." It also provides that "all other work generally recognized as carmen helpers' work shall be considered carmen helpers." Moreover, it is to be noted that Rule 47 contemplates mechanics and apprentices are to be furnished sufficient competent help when required in the form of helpers who, when assigned for that purpose, are to assist them in performing their work. Nor is it to be overlooked that under the provisions of Rule 28 carmen helpers are covered by provisions of the agreement applicable to the carmen's craft and have fixed seniority and other rights under its terms.

Without more discussion it is clear from the rules of the agreement itself that carmen helpers may be assigned to perform some of the work that carmen or apprentices may properly perform. Indeed to hold otherwise would wholly disregard the rules applicable to such helpers and render them nonsensical and meaningless. Thus it becomes apparent, as we have heretofore indicated, the rights of the parties must stand or fall on whether the agreement comprehends the work heretofore described can be performed by carmen helpers. In the final analysis the answer to this question, in our opinion depends on what constitutes work generally recognized as carmen helpers' work.

That assisting in the lifting of heavy parts to and from a car which is being constructed, rebuilt, repaired, or dismantled, including the carrying of materials to and from the car, is work generally recognized as carmen helpers' work seems sufficiently obvious to preclude the necessity of discussion or debate. It is a form of labor which requires no technical knowledge or training. Indeed the title "carmen helpers" as used in Rule 104 implies that such an employe may assist in the unskilled portion of a carman mechanic's work. That is precisely the work the involved carmen helpers were performing, except for the fact they were using a crane truck instead of their hands in lifting and moving car parts. Manifestly such fact affords no sound ground for a conclusion the work had become any more skilled or technical. Touching on the point now under consideration see Award 1486 which holds:

" . . . The work a helper may do in helping a carman is such unskilled work as is necessary in expediting the work of a carman such as lifting or lowering heavy parts, pulling or pushing in removing or assembling parts, performing unskilled and common labor in furthering the work of the carman jacking and blocking up of cars or parts thereof, and such other work as is spelled out in Rule 129 . . ."

Based on what has just been stated we are impelled to hold that the operation of crane trucks in assisting carmen can properly be assigned to carmen helpers and that the agreement does not require the carrier to assign such work to carmen.

In reaching the conclusion just announced we have not been unmindful of what was said and held by this Division in Award 1363, on which the organization relies to support its position. That case is distinguishable. The primary issue was whether work of the character here involved could properly be assigned to employes not covered by the current carmen's agreement and while it holds that could not be done it is clear from the record no issue respecting whether such work was properly assignable to carmen helpers or belonged exclusively to carmen was raised, considered, or determined. More in point and entitled to greater weight as a precedent is Award 1467 where the latter issue was squarely presented and a claim based upon the premise that such work belonged exclusively to carmen was denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.