

Award No. 1504
Docket No. 1409
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, roofs, ends, sides, truck side frames, wheels and similar work 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 a derrick to assist Carmen in performing 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 La Junta, Colorado, the carrier maintains facilities in the car department for building, maintaining and repairing freight cars, including a force of approximately 200 carmen, carmen apprentices and carmen helpers.

The carrier operates in this department, one gasoline powered self-propelled Rail Burro derrick, Model 30, 7½ tons lifting capacity, to remove and replace car doors, roofs, ends, sides, truck side frames, wheels and other similar work to expedite the duties of carmen assigned to building, maintaining and dismantling cars for repairs.

Carman Helper C. L. West is assigned to operate the tool, who is working under the shop crafts' agreement dated August 1, 1945. He is not a carman at La Junta.

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

POSITION OF EMPLOYES: It is respectfully submitted to be, as described in the foregoing statement of facts, indisputable that this derrick operator is substituted for carmen and is assigned to perform carmen's work, defined as such in the classification of work provisions of Rule 102, particularly that part thereof which reads:

ferences with management such sums as they would have earned if they had remained at work—might be deemed to possess much merit.

But the evidence of record discloses the following: that Rule 32 has been operative since October 1923; that the piece-work system, upon the earnings of which reliance is now being placed, has been in effect since July 1924; that throughout this period 'loss of time' as specified in the rule, has been construed and paid for on the basis of the prevailing hourly rates; and that not until about 19 years after piece work had been installed was protest made against this method of payment and the 'average piece work earned rate' requested.

In these circumstances the established practice must be deemed to reflect the intent and understanding of the parties. There is no basis for finding a violation of the existing agreement; if relief is considered necessary, it must be secured through the process of negotiation."

In conclusion the carrier respectfully requests the Second Division to dismiss the instant dispute for lack of jurisdiction on the grounds that it 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; reminds it that this Division has no power to nullify an agreement and that to sustain the employees' position would be, in effect, writing a new rule or giving a meaning to the contract not warranted by a literal reading thereof and clearly not intended when the agreement was negotiated.

Carrier respectfully requests that the employees' claim in the instant dispute be denied in its entirety for the reasons herein expressed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, the issues, and the principles decisive of this case are substantially the same as those involved in Award No. 1502 (Docket No. 1396), adopted as of this date. In fact, except for the fact that the work involved was performed at a different point, there are no distinguishable features. For that reason, based on what is said and held in such award, we hold the instant claim must be 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.