

Award No. 1937  
Docket No. 1777  
2 SP(T&NO)-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (CARMEN)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA  
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)

**DISPUTE: CLAIM OF EMPLOYES:** 1. That car inspection and car repair work at Austin, Texas Car Department performed by Carmen in connection with the maintenance of equipment was transferred from the Texas and New Orleans Railroad Company Carmen to a Missouri-Kansas-Texas Railroad Company of Texas Carmen in the Texas and New Orleans Train Yards March 8, 1952 without any authority to do so under the current agreement.

2. That accordingly the Carrier be ordered to compensate Carman R. W. Cooksey, who holds seniority as such, for seven (7) hours and fifty-five (55) minutes at the applicable overtime hourly rate of pay for March 8, 1952.

**EMPLOYEES' STATEMENT OF FACTS:** The Missouri-Kansas-Texas Railroad Company of Texas does not have a train yard or shop facilities and do not have carmen stationed at Austin, Texas. The Missouri-Kansas-Texas Railroad uses the Texas and New Orleans Railroad passenger station for their passenger service, and the Texas and New Orleans Railroad train yards for their freight service. The Texas and New Orleans Railroad yard switch crews perform the switching and the carmen perform the inspection of the trains and perform the repair work on cars that need repairs that arrive and depart in the Missouri-Kansas-Texas Railroad Company trains at Austin, Texas.

March 8, 1952, Missouri-Kansas-Texas Railroad special passenger train arrived in Austin, Texas at 11:45 A. M. at the passenger station and after the train was unloaded of its passengers, the train was pulled into the Texas and New Orleans Railroad train freight yard on a track which is equipped with facilities to water and service passenger equipment, and Missouri-Kansas-Texas Railroad Company transported one car inspector to this special train in the Texas and New Orleans Railroad Yards to perform the inspection and repair work of the equipment of this train.

The train departed Austin, Texas at 5:00 P. M., March 8, 1952, and all the work was performed by the Missouri-Kansas-Texas Railroad car force on

**CONCLUSIONS:**

The instant claim has not been presented to or discussed with the carrier as required by Rule 32, and the Railway Labor Act. Wherefore, the carrier respectfully requests that the case be dismissed.

In the alternative, in view of the facts herein presented, and precedents cited, there is no basis, contractual or otherwise, to support this claim on its merit. The carrier requests that the claim be denied in its entirety.

**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.

Claim is made in behalf of Texas and New Orleans Railroad Company Carman Cooksey, employed at Austin, on account of inspection of equipment by a Missouri-Kansas-Texas carman, on an M-K-T special train being held over at Austin on the T. & N. O. coach track.

Austin is a division terminal on the T. & N. O. at which T. & N. O. carmen are employed. It is also an intermediate station for M-K-T regular passenger trains, which seldom require equipment service there. In the instant case a special M-K-T passenger train was run to Austin, which required cleaning and inspection while held over on the T. & N. O. coach track and an M-K-T carman and four coach cleaners were sent from San Antonio by truck for cleaning and inspecting the passenger equipment.

Regularly, as is not disputed, T. & N. O. carmen would have exclusive right to the work within the scope of their agreement arising on the T. & N. O. tracks.

Carrier first challenges this Board's authority to determine the claim on the merits because, it says the claim was amended during the progress of appeal in that initially it asked for payment at claimant's regularly assigned hourly rate of pay and now, before this Board, payment is asked for at the applicable overtime rate. Such change in this claim is not a change in the nature or substance of the claim but only in the extent of relief sought and does not affect the jurisdiction of the board.

Next, carrier asserts that the service belonged to M-K-T employes by virtue of a joint trackage agreement between the two carriers made in 1904, prior to employes' original contract, and revised under date of September 17, 1951. Such agreements in some situations curtail employes' rights along with those of their employer. However, carrier has not shown any such agreement in the record. It has included only a single paragraph each from the original and the revised joint terminal agreements. The former agreement provided that: "the engine, passenger and freight cars of the Texas Company (now M-K-T) are to receive such care in Austin from the Central Company (now T. & N. O.) as the Texas Company may request."

The 1951 revision provided that: "T. & N. O. will clean, water and ice the passenger equipment handled into and out of Austin, Texas, in M-K-T passenger trains, when required." Carrier would define "require" as synonymous with "request." To "request" relies on choice, to "require" relies on obligation. T. & N. O. carmen were "required" to perform the work within their agreement on the property of their employer; the passenger equipment

“required” inspection. From the showing in the record the joint terminal agreement is not a defense to the claim.

Past practice is relied on but not shown; in any event not since the 1951 revision.

Carrier challenges the extent of the time claimed and the record supports the challenge.

It did not exceed two hours twenty-seven minutes and compensation should be based on that time at pro rata rate.

In referee argument carrier denied that the M-K-T carmen performed any inspection work but it admitted it in correspondence on the property and repeatedly in its submission and cannot now be heard to set up such new and inconsistent defense.

#### AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1955.