

Award No. 2198

Docket No. 2037

2-T&P-CM.'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned other than Carmen to repair and paint movable tool boxes in East Dallas Yards on January 12, 1954.
2. That accordingly the Carrier be ordered to compensate the Carman designated in the amount of eight (8) hours at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: At Dallas, Texas the carrier maintains a running repair force and inspection force of some 24 or 25 carmen, with carmen off duty 24 hours daily, seven days per week; not having sufficient painting to justify a painter, carmen are used to perform the painting.

On Tuesday, January 12, 1954, Section Laborer Cole in the yards at Dallas, Texas applied a new mule-hide roof to a tool box; he also painted same and repaired another movable tool box by removing rotten boards and applying new boards. All of this work was performed on the first shift and in sight of the repair track where a number of carmen were on duty. The local chairman of carmen immediately called this to the attention of the car foreman, who later advised the local chairman that he had talked to the Section Foreman Lyle, and he could not have the section laborer removed and carmen assigned.

Carman O. C. Oliver, hereinafter referred to as the claimant, working 3:30 P. M. to 11:30 P. M., Saturday through Wednesday, was off duty and available to have performed the work had he been called.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

Whether or not carrier had a right to contract the work to outsiders we need not and do not decide. All we decide is that until the Maintenance of Equipment Department was requested to do the work the machinists of that department had no right thereto."

Therefore, the carrier respectfully requests the Board to deny the claim.

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 employ 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.

This claim arises out of the fact that on January 12, 1954, carrier had a section laborer repair and paint one or more movable tool boxes used for heavy tools. The claim is made that this work belonged to carmen and that Carman O. C. Oliver be compensated therefor. The work was performed in the East Dallas yards at Dallas, Texas at a point between the roundhouse and the train yard.

The record shows that normally such tool boxes are built by carmen in carrier's Reclamation Plant at Marshall, Texas. However, the same is not true as to the maintenance and repair thereof. Nor was it, as a matter of practice, exclusively performed by carmen in carrier's Maintenance of Equipment Department.

The fact that carmen may have, in some instances, performed the work is not conclusively controlling when it does not appear that there has been a practice under which they have been doing it exclusively. See Award 1110 of this Division.

Rule 81 of the parties' effective agreement provides, in part, as follows:

"Carmen's work shall consist of * * * all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; * * *, and all other work generally recognized as carmen's work."

Rule 21 provides that:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft. * * *."

Normally this language would cover the work of repairing these tool boxes but the scope of the language of Rule 81 is qualified by the preamble to the parties' effective agreement, which provides:

"It is understood that these rules shall apply only to those performing the work as specified in this agreement in the Reclamation Plant and Maintenance of Equipment Department."

By this language carrier gave to the employes covered by this agreement the right to perform all the work of the class covered thereby when it is performed in the Reclamation Plant and Maintenance of Equipment Department but it does not require that work of the class covered by the agreement necessarily has to be so assigned. It does, however, preserve the then practice on the carrier relating thereto but in no way extends or expands it. See Awards 1501 and 1556 of this Division for comparable holdings.

In view of what we have said we find the type of work here performed by a section laborer does not exclusively belong to the carmen and that, because thereof, they are not here in a position to claim their agreement was violated by what carrier did.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1956.