Award No. 2238
Docket No. 2006
2-L&N-FO-'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. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Firemen and Oilers)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than Tractor Operators are improperly used to perform the work of Tractor Operators at South Louisville Shops, Louisville, Kentucky.

2. That accordingly, the Carrier be ordered to compensate Tractor Operators first out on the Tractor Operators' Overtime Board in the amount of 8 hours at time and one-half rate for each day from and including July 21, 1953, to and including September 22, 1953.

EMPLOYES' STATEMENT OF FACTS: At South Louisville Shops, Louisville, Kentucky, the Louisville and Nashville Railroad Company (hereinafter referred to as the carrier) employed a force of tractor operators with hours of 7:00 A. M. to 3:40 P. M. and 3:40 P. M. to 12:00 Midnight. The carrier also employs a large force of lift truck, load lugger and boom truck operators, all of whom are covered by agreements in other shop crafts. Tractor operators' work consisted of among other things, operating tractors in connection with the pulling of loaded wagons to and from various locations of the South Louisville Shops.

The one position of tractor operator on the 3:40 P. M. to 12:00 Midnight shift was abolished effective July 21, 1953 and the work of operating the tractor in connection with the pulling of loaded wagons was assigned to other than tractor operators.

After claims were progressed the carrier agreed to restore the one position of tractor operator on the 3:40 P. M. to 12:00 Midnight shift, effective September 23, 1953.

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

We are not in disagreement with the contents of Mr. Abner's letter of June 24, 1955; nor does the carrier have knowledge of any dispute involving the question of jurisdiction. Any time trailer wagons are pulled by tractors, the tractors are manned by tractor operators covered by agreement with the I.B.F.&O and paid the proper rate. Similarly, when pulled by lift trucks they are manned by employes covered by the skilled agreement who are allowed the rate as provided therein. Neither agreement defines the class of work to be performed with a particular class of equipment.

It is our position that inasmuch as there is no governing rule in the current agreement with the IBF&O making it mandatory that only tractors be used for pulling these trailers, there is no question here presented to your Board as to violation of any provision of the agreement. We further take the position that this Board is without authority to incorporate any such rule or interpretation into the existing agreement. It is clear that the agreement the employes rely upon to support their claim does not expressly provide that this work belongs to tractor operators.

In view of the foregoing the claim of employes is without support under the agreement and should 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.

The organization complains of the fact that carrier used employes, other than tractor operators, to perform certain work at its South Louisville Shops, Louisville, Kentucky. It contends this work, under the scope of its agreement with the carrier, belongs to tractor operators and, by having other of its employes perform it, carrier violated the scope rule thereof. As a consequence it asks that carrier be ordered to compensate tractor operators first out on the tractor operator's overtime board for eight (8) hours at time and one-half the regular rate of tractor operators for each day from July 21 to September 22, 1953, both dates included.

The work involved is the pulling of loaded wagons or trailers to and from various locations in the South Louisville Shops.

Prior to July 21, 1953 the force of tractor operators employed by carrier at its South Louisville Shops consisted of two (2) shifts; the first from 7:00 A. M. to 3:40 P. M., and the second from 3:40 P. M., to 12:00 Midnight. As of July 21, 1953, the 3:40 P. M. to 12:00 Midnight shift was abolished until September 23, 1953, when it was restored. During this period of time from July 21 to September 23, 1953 carrier used lift trucks and other mobile equipment of that type to haul these wagons or trailers. The operators of these lift trucks and other mobile equipment so used were not covered by the agreement covering tractor operators.

Rule 1, "Scope," of the parties' agreement, effective June 1, 1942 with revisions up to February 1, 1952, provides:

> "These rules govern the hours of service and working conditions of the classes of employes shown below, working in and about shops, power plants, train yards and engine terminals:
>
> Tractor Operators— * * *."

The scope rule, by naming positions, embraces all work which such employes usually and customarily performed at the time of the negotiation and execution of the agreement. See Award 1357 of this Division so holding.

We find, at the time (1943) the position of tractor operators was negotiated into the agreement and ever since, the occupants thereof performed this work except during the period from July 21 to September 23, 1953, when carrier assigned it to and had it performed by other employes. This we find was in violation of the scope rule as it applies to tractor operators at the South Louisville Shops. Consequently the claim should be sustained to the extent of the work actually lost. However, for the loss of work coming within the scope of an agreement the employes whose work was thereby taken from them are entitled to recover for the loss thereof at the pro rata rate applicable thereto and not to a penalty rate.

AWARD

Claim sustained for the work lost but payment thereof to be at the pro rata rate applicable thereto.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.