Award No. 2998
Docket No. 2739
2-GH&H-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Carrier violated said agreement when other than G.H.&H. carmen were used to repair MPX 1439 which was set out of train at Mile Post 10 on the Galveston, Houston and Henderson property, February 11, 1956.

2. That the Carrier be ordered to compensate Claimant, E. A. Holzworth, in the amount of four (4) hours at the pro-rata rate of pay account of his not being called to perform this work.

EMPLOYES' STATEMENT OF FACTS: On February 11, 1956, freight train car M.P.L.X. No. 1439 was set out of train at Mile Post 10 on the G.H. & H. Railroad, account of hot box, and carmen who are not employes of the G.H. & H. Railroad performed the inspection and repair work necessary to restore this car to the requisite condition for safe operation in another train.

Carmen are regularly employed by the G. H. & H. Railroad, subject to the agreement between this carrier and System Federation No. 14. Claimant, Carman E. A. Holzworth, is regularly employed by this carrier as a car inspector at Galveston, Texas.

This dispute has been handled in the usual manner up to and including the highest carrier officer, who has declined to adjust same.

president & general manager, Mr. H. E. Smith, which is quoted in carrier's statement of facts, Paragraph No. 7, that all work in connection with repairs to freight and passenger cars at any point on the line of road between Houston and Galveston belongs to GH&H carmen regardless of what train set the cars out so long as they are set out in this territory. In view of such a contention the carrier wishes to point out the fact that this line of road is jointly owned by the Missouri Pacific Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas and is in reality a part of each of these roads and there would never be an opportunity for cars, freight or passenger, being in the control and possession of the carrier (GH&H) or subject to operation of this carier's working agreement with the carmen's organization, except withn the yard limits of the Galveston Terminal on the GH&H RR which is operated by the GH&H RR. Company. Therefore, as heretofore stated, the carrier's carmen do not have an exclusive contract or right for repair work on cars controlled by and in the possession of the MoP RR. Co. and the M-K-T RR. Co. of T. on the main line of road even though the carrier does not have the right within the provisions of the agreement to use them for road work, it does have the option.

The carrier wishes to reiterate that the practice of using HB&T Ry. Co., carmen and not GH&H RR. Co., carmen for the purpose of making repairs to cars delivered to the HB&T Ry. Co., by the MoP RR. Co. via the GH&H RR., is of long standing. Therefore, it cannot be said that such car service repair work belongs to the GH&H RR. Co.'s carmen.

The only car service repair work which the carrier's carmen have exclusive contractual rights to is that car service repair work necessary to be performed on cars while in the carrier's possession and control within its Galveston Terminal yard limits. In view of this fact it would be equally as unethical to call HB&T or MK&T carmen for car repair work in the Galveston terminal as it would be to call GH&H RR. Co.'s carmen for car repair work in the HB&T Ry. Co.'s or the MKT RR. Co.'s Houston terminal. And, as a matter of fact, HB&T and MKT carmen are not used in the Galveston terminal and likewise GH&H carmen are not used in the Houston terminal.

The foregoing facts conclusively show that the employes' contention and claim are wholly without agreement support and, therefore, should be denied by your Board.

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 work for which claim was made herein was on a car set out from a Missouri Pacific train within the Houston yard limits where the H.B. and T. Railroad services Missouri Pacfic equipment. The Missouri Pacific has a contractual right to operate on those tracks which are owned by this carrier. Under such circumstances the mere fact that the tracks on which the car

was set out are owned by this carrier does not entitle it or its employes to perform the repair service involved.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2998

There is no evidence in the record to support the statement in the findings that "The work . . . was . . . within the Houston yard limits where the H. B. and T. Railroad services Missouri Pacific equipment."

Not only is the claim of the Galveston, Houston and Henderson carmen supported by the fact that the work was performed on tracks owned by the GH&H Railroad but also by lack of any evidence in the record that the Houston Belt & Terminal Railway Company had any right to operate its trains or have its employes perform service on tracks belonging to the Galveston, Houston and Henderson Railroad.

On the evidence presented the claim should have been sustained.

/s/ James B. Zink
/s/ R. W. Blake
/s/ Charles E. Goodlin
/s/ T. E. Losey
/s/ Edward W. Wiesner