

Award No. 3136
Docket No. 2941
2-CRI&P-F&O.'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Firemen and Oilers)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement other than a laborer was improperly used to clean grain cars in the Carrier's Car Yard at Goodland, Kansas, between the hours of 8 A. M. and 11 A. M., Dec. 22, 1956.

2. That accordingly the Carrier be ordered to compensate Laborer Lloyd Harper in the amount of 3 hours at the applicable laborers rate.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, maintains a force of carmen in their Goodland, Kansas Car Yard. They also maintain 1 regular car department laborer Monday through Friday, 5 days per week with Saturday and Sunday as rest days.

The duties of this car department laborer consist of cleaning feed, flour and grain cars, cleaning the car yard, picking up scrap and carrying material which is regularly assigned to and performed by him throughout his regular work week assignment.

On Saturday, December 22, 1956, while Laborer Lloyd Harper, hereinafter referred to as the claimant, the regular assigned car department laborer was off on his rest day, the carrier assigned to and did have carmen perform the work of cleaning grain cars 142218—141553 and Southern Pacific Car 24423. (See Exhibit A submitted herewith).

out debris, sweep and otherwise clean the cars to the extent necessary for them to perform their work.

Cleaning or sweeping of freight cars is not a monopoly of shop laborers. Sectionmen, under the Maintenance of Way Agreement, and freight house forces, under the Clerks' Agreement, have in the past cleaned and do presently clean freight cars. The employes in progressing the claim on the property have not produced and, furthermore, cannot produce any rule of their agreement outlining any specific work to be allocated to mechanical department laborers, nor any rule in their agreement which writes sweeping or cleaning of freight cars into a scope rule. Hence, there was no violation of their agreement.

It is noted employes ask for penalty payment. Without relinquishing our position, as above, we submit that in line with awards of this and other divisions of the National Railroad Adjustment Board, in event there is found to be a violation of the agreement, pro-rata rate only is proper.

For the above reasons, we respectfully request your Board to deny the claim of the employes.

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.

Parties to said dispute were given due notice of hearing thereon.

In this case carmen were used for 3 hours on claimant laborer's rest day to clean grain cars. The carrier explains that the cleaning done was incidental to the repairs which the carmen were to do. The organization contends that such work has always "been part and parcel of the car department laborer's duties" and that the work is covered by Rule 1 (Scope) wherein "Car Yard Laborers" are listed.

The carrier agrees that laborers have been so used but that they have never done all the cleaning work to the exclusion of others and that the scope rule of itself does not grant any exclusive rights. We have compared Awards 1825 and 2845 and now conclude that the latter coincides more nearly with the facts herein. It has not been shown that the rule was violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3136

We must dissent from the findings and cite the majority ignored the fact that the claimant performed all of the work in question from Monday through Friday, each week, pursuant to his regular assignment in accordance with the controlling agreement. It is an arbitrary assumption that the Scope Rule, "of itself does not grant any exclusive rights", therefore the Award is erroneous.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner