Award No. 3171
Docket No. 2429
2-MP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the carrier improperly assigned other than Carmen to making pallets (skid boxes) for use in the DeSoto, Missouri Car Shop, during the months of April, May, June, July and August, 1955.

2. That accordingly, the carrier be ordered to additionally compensate Carmen C. W. Woodard and Robert Coleman, eight (8) hours each at the straight time rate for September 1, 1955, and for sixty (60) days prior thereto.

In award No. 2971 the Division held:

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 question here is whether carmen or Maintenance of Way Employes are entitled to the work involved in this dispute.

The said work was assigned to Maintenance of Way Employes by the carrier. The Carmen claimed that they were entitled to the said work.

The Brotherhood of Maintenance of Way Employes were not given notice of the hearing in this matter in accordance with Section 3 First (j) of the Railway Labor Act.

Before the merits of a dispute are decided, all parties " involved" should be given notice of the dispute and an opportunity to be heard.

An employe or organization should not be deprived of any of his or its rights or property without a proper notice first being given and a fair hearing accorded to them if they desire to be heard. Certainly all employes and organizations must agree with that statement if they desire to protect their own rights and property.

The Brotherhood of Maintenance of Way Employes were and are involved in this dispute and therefore should receive notice in accordance with Section 3 First (j) of The Railway Labor Act.

What was said in our Award 2970 is adopted here.

AWARD

Consideration of and decision on the merits herein is deferred pending due notice by this Division to the organization of Brotherhood of Maintenance of Way Employes to appear and be represented in this dispute in accordance with Section 3 First (j) of The Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.

LABOR MEMBERS' DISSENT TO AWARD 2971.

The majority's refusal to decide these cases on the merits renders the Division vulnerable to the stalemating of any case simply on the suggestion of a carrier that a third parts is involved. The erroneousness of the majority's holding that consideration and decision on the merits should be deferred pending due notice by the Division to the Brotherhood of Maintenance of Way Employes is readily apparent since the statutory jurisdiction of the Second Division does not include such employes nor does the governing agreement include said employes.

The majority should have adhered to the rulings of Second Division Awards 340, 1359, 1628, 2315, 2316, 2359 and 2372 and awards of other Divisions, such as Award 8079 of the Third Division, that notice to third parties is not required where the employes' rights, if any, are not controlled by the agreement of the claimant organization or where the employes are members of a craft whose disputes are referrable to other Divisions of the Board and over which the Second Division would have no jurisdiction.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ J. B. Zink

Thereafter, notice was given the Brotherhood of Maintenance of Way Employes and upon receipt of the following information from that organization, the case was considered on its merits:

Please be advised that the contractual rights accruing to the class or craft represented by Brotherhood of Maintenance of Way Employes on this property are predicated solely upon the provisions of an agreement between the carrier and our organization dated August 1, 1950, together with such amendments as are pertinent thereto, and that the specific dispute as identified by the above listed docket number is not one arising out of the application of these contractual provisions. Furthermore, this dispute has never been considered in conference by representatives of the carrier and this Brotherhood as provided in Section 2, Second, of the Railway Labor Act, and accordingly, it would be impossible for us to submit supporting or documentary evidence as required by the Rules of Procedure of the Adjustment Board, issued October 10, 1934, in attempting to substantiate any position we might deem it advisable to take.

In the event application of the Maintenance of Way Agreement was a subject of controversy between our Brotherhood and the carrier, it is our understanding that the procedural provisions of Section 3, First, (h) of the Railway Labor Act, would require that the dispute be referred to the Third Division of your Board.

In addition, we do not believe that our interests can be benefitted or adversely affected as a result of any award which your Board may render in connection with this dispute, inasmuch as Section 3, First, (m) of the Railway Labor Act, specifically provides that "* * * awards shall be final and binding upon **both** parties to the dispute * * *." (Emphasis ours.) Quite obviously, **both** or the **two** parties to this dispute are the Missouri Pacific Railroad Company and the carmen of System Federation No. 2, Railway Employes' Department, A. F. of L.-C. I. O.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad, hereinafter referred to as the carrier, maintains a large car shop at DeSoto, Missouri, where over 800 carmen and helpers are employed. The carrier employed two bridge and building employes to make pallets, or skids as they are often called, which are portable and used to stack material and parts on to be used in the constructions of freight cars so that they can be handled more easily by fork-lift trucks.

Carmen C. W. Woodard and Robert Coleman, hereinafter referred to as the claimants, were on the night shift and were available to perform this work if assigned.

This dispute has been handled with all carrier officials up to and including the highest officer of the carrier designated to handle such disputes with

the result that they have declined to make satisfactory adjustment. The agreement of September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is not in dispute that the claimants established and maintain seniority rights within the carmen's craft. It is indisputable that the carrier elected to augment the regular carmen's force by these two bridge and building employes on days for which the employes are seeking compensation. This indefensible action definitely damaged these two claimants as work coming under the scope of an agreement cannot be removed therefrom and assigned to others not covered by the agreement, otherwise, if such a practice were endorsed, it would render the agreement useless. The carmen's classification of work rule, which has bearing on this dispute, provides as follows:

> "CARMEN CLASSIFICATION OF WORK: RULE 117. Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel, **planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops;** carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, removing and applying wooden locomotive cabs; pilots, pilot beams, running boards, foot and head-light boards, tender frames and trucks (see note); pipe and inspection work in connection with air brake equipment on passenger and freight cars; applying patented metal roofings; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and in all other work generally recognized as carmen's work." (Emphasis ours.)

It will be observed that the foregoing rule gives to carmen all work in the buliding, maintaining and dismantling for repairs of freight and passenger cars (except all wood freight train cars). In addition thereto, carmen are entitled to perform other work not connected with passenger and freight cars, such as planing mill, cabinet and bench work, and all other carpenter work in shops and yards.

These pallets (skid boxes) are portable and used to stack car material on so that it can be handled by use of fork-lift trucks in the material yards at DeSoto Car Shops. Since these pallets (skid boxes) are used in the car department to handle car department material and in view of the fact that the "Carmen Classification of Work Rule 117" states in pertinent part:

> ". . . planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops; . . ."

it is the contention of the employes that the manufacturing of these pallets is work that has been contracted to the carmen.

insofar as they relate to the division of work as between the classes of employes covered by the three wage schedule agreements mentioned, will be changed to conform herewith."

which makes it clear there was no intention to change existing rules or practices, except where in conflict with specific provisions of said Agreement.

In the instant case the work in question was not performed in the reclamation plant nor in the M. of E. Department, and the pallets were not for use in the M. of E. Department. Furthermore, it has always been the practice at DeSoto for B. & B. employes to build these pallets for the store department for use by the store department in handling and storing material.

The agreement known as Decision MW-95 SC-95 is merely an allocation of work agreement as between the two classes of employes parties thereto when performed in the mechanical department and does not reach out on the property outside the mechanical department and bring work into the shops which has never been performed in the shops.

In conclusion:

1. A valid award sustaining this claim cannot issue unless due notice is given the other party involved, The Brotherhood of Maintenance of Way Employes, as required by Section 3, First (j) of the Railway Labor Act, as amended.

2. There is no merit to this claim, nor support therefor, in the agreements between the parties hereto.

3. Even if this claim should have agreement support, which it does not, the claim is not sufficiently specific to enable the carrier to determine the amount of damages, if any, sustained by the claimants.

For the reasons set forth in this submission, there is no basis for this claim and it 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.

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

This claim involves jurisdictional dispute between Carmen of the Maintenance of Equipment Department and Carpenters in the Maintenance of Way Department as to the manufacture of certain pallets.

The pallets involved in this matter were manufactured by Carpenters in the Bridge and Building Department in its own carpenter shop for the use of the Store Department which was part of the Maintenance of Way Department. The Bridge and Building Department was also part of the Maintenance of Way Department.

The said pallets were not manufactured to be used by the Maintenance of Equipment Department, nor were they manufactured in the Maintenance of Equipment Department.

The shop craft agreement involved herein applied to those who performed the work specified in said agreement, in the Maintenance of Equipment Department, and therefore, would have no application here. The same is true as to Decision MW-95 SC-95 which applied only to work performed in the Maintenance of Equipment Department.

The carrier properly assigned the carpenters in the Bridge and Building Department to manufacture the said pallets for use in the said Store Department.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3171.

The finding that "the claim involves a jurisdictional dispute" is not true. Nor is it true that the shop craft agreement is not applicable here. The work performed is performed by carmen in connection with the building and maintaining of cars. Neither is it true that Decision MW-95 SC-95 is not applicable.

Refusal to apply the controlling agreement makes one wonder if the majority understands the purpose of collective agreements.

James B. Zink

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner