

Award No. 3246

Docket No. 2979

2-SOU-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Carrier improperly assigned Stores Department employes at Coster Shop, Knoxville, Tennessee, on July 3, 5 and 8, 1957, to deliver or transport material from store house or point of storage to the shop (car department), for supplying or replenishing the material kept in bins located in hand brake and air brake shop and placing the material in the bins located in these shops.

2. That accordingly the Carrier be ordered to additionally compensate Carman Helpers G. C. Cupp, M. J. Mounger and P. A. Mullins for five hours at pro rata rate for the aforesaid violation of Agreement on the above named dates.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway Company, hereinafter referred to as the carrier, maintains a shop at Knoxville, Tennessee known as Coster Shop wherein they have a hand brake and air brake shop located within the car shop section. Carmen and carmen helpers are employed by the carrier at this shop.

On July 3, 5, and 8, 1957 the carrier used a stores' department employe to deliver or transport material used by the carmen in repairing hand brakes and air brakes from the store house point of storage to the hand and air brake repair shop and place same in material bins located in the said shop.

Prior to the instant case when material used in repairing hand and air brakes was needed, carmen helpers secured the material and delivered same to the repair shop.

connection with the instant dispute, and afford them an opportunity to be heard before taking jurisdiction of or passing upon the merits of the claim here presented.

(b) The effective agreement has been complied with, and the claims which the brotherhood here attempts to assert are without any basis. The involved work was properly assigned.

(c) Submission of the claims to the Board constitute nothing more than an effort by the brotherhood to establish new rules and working conditions by a Board decision, rather than by following the processes of collective bargaining. That the Board has no authority to grant the request here made has heretofore been recognized by it.

If, after due notice has been given employes of the clerical class or craft, and they have been given the opportunity of being heard, claim is considered on the merits, the Board cannot do other than make a denial award, for to do otherwise would be contrary to the specific terms of the two agreements in evidence.

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.

Employes invoke Rule 151 of the controlling agreement between their organization and the carrier and a letter agreement of October 9, 1939, found at pages 2 and 3 of the employes' statement of claim.

The pertinent part of Rule 151, defining the duties and prerogatives of carmen helpers, reads:

"Employes regularly assigned to help carmen and apprentices, * * * **stock keepers (car department), material carriers**, * * * will be classified as helpers". (Emphasis ours.)

"Stock Keepers" relates to the keeping of stock which is in possession and control of their craft (carmen). Likewise, "Material Carriers" are carriers of material properly in possession of the craft.

The parties differ, whether the letter of October 9, 1939 included more than small items, such as nuts, bolts, etc., or (all) "any other materials used by shop craft employes". The interpretation of the carrier, of date May 19, 1939, is consistent with that which it now urges, except that it did not more specifically than the letter identify the materials to which it referred.

As we read the letter of agreement it is immaterial, in this submission, whether or not it is all inclusive, as to materials to be obtained by carmen helpers from the Purchasing and Stores Department.

The letter clearly delineates and restricts the right granted the carmen helpers to the removal of "materials to be placed in such bins or racks" as "would be obtained by shop crafts employes" from "the store house or other point of storage." (Emphasis ours.) It is significant too that by the agreement "shop craft employes will deliver a requisition to a storehouse employe as and when such material is obtained".

Up to the time that the Stores Department relinquished possession of the materials from their place of storage, upon requisition, the carman helpers could not, under the terms of the agreement, remove them. This requirement as to requisition may or may not have been strictly observed.

The determinative factor then is—were the places where the materials were placed, in the hand brake and air brake shops both located in the Coster shop of the carrier "points of storage". The fact that these points were near or far from the place where eventually used by the mechanics is not controlling although possibly the genesis of this dispute.

It does not appear that the materials where placed by the Stores Department were not in greater quantity than required by the mechanics for current use, nor that these placings were not of some permanence.

It is probable that the Purchasing and Stores Department had the right of possession of the materials and the right to exercise it until they were released on requisition. The burden is on the organization to show a violation either of the applicable rules or the agreement. It has not made this proof.

Carrier urges that this Division has not jurisdiction to adjudicate this claim until notice of the pendency of this proceeding is given to the employes of the Purchasing and Stores Department, an interested and necessary party under Section 3, Fourth Division (j) of the Railway Labor Act. In view of the award which in effect is favorable to the third party it is unnecessary to pass upon this question of notice. See majority opinion Whitehouse, et al. v. Illinois Central Railroad Company, 349 U. S. 366.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.