Award No. 3305
Docket No. 2916
2-CRR-F&O-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Firemen and Oilers)

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That the Carrier violated the current and controlling Firemen and Oilers' Agreement Scope Rule 2 and Rule 19 by furloughing of four car yard laborers and assigning employes covered by another agreement to perform their work there by depriving them of income and work since about December 1, 1955.

2—That accordingly the Carrier be ordered to compensate Firemen and Oiler craftsmen, to be designated later, in the amount involved as a result of this violation since about December 1, 1955.

EMPLOYES' STATEMENT OF FACTS: At Erwin, Tennessee, car yard shops, there are approximately 27 laborers employed in the car department. For as many years as one cares to remember car department laborers were used to unload heavy material used by carmen in repairing cars such as timbers, steel beams, draw bars, etc. This is confirmed by statement of laborers and carmen, including the general chairman of carmen, submitted as Exhibit A. On or about December 1, 1955 the carrier furloughed four car department laborers and assigned the work of unloading this material to the clerical or stores department laborers. The aforesaid material is unloaded and piled in the various places in the car yard where carmen have access to it near the location where they are repairing cars.

The dispute has been handled with carrier officials designated to handle such affairs who have declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended is controlling.

Furthermore, the claim has not been progressed in accordance with Article V of the May 20, 1955 Agreement and, therefore, has no standing.

Further, the claim finds no support in the rules agreement dated September 1, 1949.

Rule 2, which is the scope rule of the agreement, provides only that certain classes of employes (usually termed shop laborers) are within the scope of the agreement, but there is no classification-of-work rule in the agreement which classifies any work as exclusively the work of the employes classified in the rule. This did not just happen. It was by intent. When the predecessor firemen and oilers' agreement was negotiated in 1944 carrier consistently declined to agree to include in the agreement any rule giving shop laborers as a class a monopoly of work, for to have done so would have been to deprive other employes of work they ordinarily and customarily performed and which they were performing when the agreement was negotiated.

As we have said in our statement of facts, the work of unloading materials at carrier's heavy repair shop has never been exclusively assigned to firemen and oilers or to any other craft, and no rule of the agreement grants to the firemen and oilers any such exclusive right.

On the contrary, the practice of many years' standing of requiring and permitting other employes as well as firemen and oilers to perform such work is fully supported by Rules 2 and 19 of the firemen and oilers' agreement and where the practice has existed for so many years without protest it is clearly evident that the employes did not question the validity of such assignments.

They must not now by an award of this Board be permitted to obtain a rule which they did not obtain through the normal channel of collective bargaining.

Carrier respectfully submits that the claim presented to the Board is not the claim progressed on the property. Further, that the claim in any form has not been handled in accordance with Article V of the May 20, 1955 Agreement.

Aside therefrom, we have shown that the practice of permitting and requiring other employes as well as firemen and oilers to unload storehouse material at the heavy repair shop and at other locations in carrier's shop area is fully supported by the rules of the agreement with firemen and oilers.

It follows that there has been no violation of the agreement and that the claim is without merit, and we request the Board to so find and deny the claim.

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.

Rule 2 of the agreement effective September 1, 1949, does not confer exclusive right to the work in question on car yard laborers. The record shows that prior to the time mentioned in this claim, it has been the unchallenged practice to employ others, as well as firemen and oilers, to perform such work. This showing is not refuted by the statement of eleven employes dated December 28, 1956. To hold that claimants have the exclusive right to unload storehouse material at the heavy repair shop would, in effect, be adding a provision to the agreement. As the organization properly states in its rebuttal to the carrier's submission, "this Board has no authority to legislate for the parties by revising the current agreement." The claim lacks merit. In view of the foregoing it is unnecessary to pass on the procedural questions raised by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1959.