

Award No. 3581

Docket No. 3333

2-CofG-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the controlling agreement the Carrier improperly assigned other than a Carman to make repairs to SAL 8638 consisting of inspecting, removing and applying a coupler knuckle on November 25, 1957.

2. That accordingly the Carrier be ordered to additionally compensate Carman J. L. Bookout in the amount of a call of four (4) hours at his applicable rate of pay.

EMPLOYES STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the Carrier, maintains an inspection and repair force on the first shift at Chattanooga, Tenn., seven days per week.

On Monday night, November 25, 1957 at approximately 10:40 P.M. Switch-Engine Foreman (Foot Board Yardmaster) Mr. E. C. Davis and/or members of his crew, found a broken coupler knuckle in the A end of SAL 8638, an empty cement hopper destined to the Signal Mountain Cement Company, Chattanooga, Tenn., and proceeded to rob a knuckle out of a near-by caboose to replace the one in SAL 8638.

Carman J. L. Bookout, hereinafter referred to as the claimant, stood first out for overtime, was willing and available to have made the repairs to SAL 8638. Claimant lives reasonably close to the yard, has a telephone, and could have gone to the yard, if called, and repaired this car in a reasonable time.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have failed to make satisfactory adjustment.

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

The claim is for a new rule. Carrier urges that the Board does not possess the authority to write rules, and the Board has consistently so held. The Board's holdings are based on the Railway Labor Act which clearly restricts the Board's authority to deciding

“ . . . disputes between an employe or groups of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . ”

See Section 3 First (i) of the Act.

The Board has heretofore held that such limitations have been placed upon it by law, and that it **does not** have authority to write new rules. See **Third Division Awards Nos. 6328, 6007, 5864, 4439, 4435, 2491, and others.** Carrier prays therefore that a denial award is clearly in order for this one reason, if for no other.

The **burden of proof rests squarely** upon the shoulders of the petitioners. See **Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others.** Also see **Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6944, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 5418, 2676, and others.**

SUMMARY

Carrier has shown conclusively that:

1. The claim is not supported by agreement rules.
2. Work of replacing knuckles is not work belonging exclusively to carmen.
3. Carmen were not, in fact, deprived of any work.
4. The work was performed by a switch engine crew in connection with their own train or transfer over to our connections, Southern Railway and L.&N. Railroad, at Chattanooga, as an incidental part of their duties in promptly moving the cars (transfer) over to connecting lines.
5. Knuckles have been replaced on cars by switch engine crews, trainmen, and others for over fifty (50) years, and no previous exception has ever been taken by the carmen.

Carrier respectfully requests the Board to deny this claim in its entirety as it is wholly without merit for the reasons shown.

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 waived right of appearance at hearing thereon.

On Monday night, November 25, 1957 the switch engine crew at Chattanooga, Tennessee was engaged in breaking up Freight Train No. 29 which had arrived from Cedartown, Georgia. While making a transfer cut of cars destined for the Southern Railway at Chattanooga the crew broke a coupler knuckle in Car SAL 8638. The crew borrowed a knuckle from the caboose of Train No. 29, installed it in SAL 8638, and carried the cut of cars over to the Southern Railway. Carmen are regularly assigned at Chattanooga but none were scheduled to be on duty at the time involved.

Contention is made that the controlling agreement precludes the assignment of other than carmen to perform the subject knuckle replacement work. It is asserted that carman Bookout was entitled to be called to perform this work. The Organization states claimant Bookout stood first out on overtime on this date, and if called could have gone to the yard and repaired this car in a reasonable time.

It is apparent that the knuckle replacement by the switch crew in the instant case was performed on a car which the crew was working. Under these circumstances, there was no violation of the carman's classification of work rule (Rule 108) in the controlling agreement. A denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.

DISSENT OF LABOR MEMBERS TO AWARD No. 3581

There is no basis in the agreement for the majority's conclusion that because the knuckle replacement by the switch crew was performed on a car on which the crew was working there was no violation of Rule 108 of the controlling agreement. Rule 108 permits no exception. The instant findings and award are a clear circumvention of the controlling agreement.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink