

Award No. 3699

Docket No. 3127

2-GN-CM-'61

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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, other than employees of the Carmen Craft were improperly used to deliver wheels to mechanics since February 4, 1957.

2. That accordingly the Carrier be ordered to additionally compensate Carmen Helpers John F. Snyder, Ray Klein, Raymond L. Eiden, Joseph Valento, William H. Fuller, Leonard Von Wald, Lester Smith, Raymond Maslowski, Anton Fleischhacker, and Clarence Wagner equally for the violation amounting to two hours each day at the time and one-half rate since claim was instituted February 4, 1957.

EMPLOYEES' STATEMENT OF FACTS: The work in dispute is by agreement carmen helpers work and has been performed by them for at least the last 15 years.

On February 4, 1957, the carrier elected to take the work of "Material Distributor" insofar as the delivery of wheels from wheel shop to round-house passenger car shop and rip track from the carmen craft and give it to the stores department.

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

POSITION OF EMPLOYEES: It is submitted that the work in this dispute contractually belongs to carmen helpers as set forth in Rule 86 of the current agreement, reading in part:

the case here and constitutes a violation of Rule 86." (emphasis-ours)

It is important to note that in the findings of **Award 2575**, quoted above in part, it was stated, "The carrier asserts that the change was made to conform to the universal practice on both properties whereby stores department employees make deliveries to stockpiling points at repair tracks etc. **The organization** accepts that practice but asserts that no stockpiles have been established. . . . The carrier does not state that any stockpiling is done and refers to them as distribution points."

In the instant case, carrier has stated herein that wheel stockpiles are maintained by the stores department at Mississippi St. Coach Yard, Jackson St. Repair Track and Jackson St. Roundhouse. Carrier has also shown herein that it has always been the practice on this property to have stores department employees deliver materials to stockpiles located at designated car repair points. The employees herein making claim have always **accepted this practice** as is evidenced by their statements in their submissions in the "King St. Station" case which is referred to in the findings of Second Division **Award No. 2575** quoted above.

In the instant dispute the employees are contradicting the position they took in **Award No. 2575** which was sustained in their favor. Therefore, in the face of such an obvious contradiction on the part of the organization, it can only be concluded that this claim of the employees is completely devoid of merit.

Summary

Carrier submits that this claim is lacking in merit and must be denied for the following reasons:

1. The work in case rightfully belongs to stores department employees by schedule rule and by past practice on this property.
2. The carmen's organization, by its own admission, has recognized and accepted the fact that the work in case rightfully belongs to stores department employees.
3. There is no schedule rule contained in the current shop craft schedule which would even remotely suggest that the "delivery" work of stores department stock to stockpiles at repair points is work belonging to employees of the carmen's craft.
4. Second Division **Award No. 2575** supports carrier's position in the instant case.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 issue arises from an alleged violation of Rule 86 of the Carmen's Rules in the applicable agreement between the carrier and System Federation No. 101. Rule 86 specifies "material distributors" as one of the classes of work belonging to carmen helpers. The employees maintain that delivery of car wheels to mechanics at St. Paul, Minnesota falls within this classification of work and that since February 4, 1957 the carrier has assigned such work to employees of the Stores Department.

Car wheels are repaired or renewed at the Carrier's Jackson Street Wheel Shop in St. Paul. When ready for use the wheels are removed from the wheel shop to an adjacent stockpile maintained by the Stores Department. The carrier shows that according to the anticipated needs of the service, such re-conditioned wheels are from time to time transported from the wheel shop stock pile, either by railway car or motor truck with the assistance of employees of the Stores Department, and delivered to other stock piles maintained by the Stores Department at or near designated car repair points on the property, viz., Mississippi Street Coach Yards, Jackson Street Repair Track and (until May 4, 1958) at Jackson Street Roundhouse. The carrier further states when wheels are requisitioned for installation on cars by mechanics, they are customarily obtained from one of these auxiliary stockpiles, and until such request is received the wheels are the sole responsibility of the Stores Department.

The dispute turns on the assignment of stores department employees to transport these wheels from the primary stock pile to one or another of the auxiliary stock piles. The carmen disclaim jurisdiction of the handling of wheels by railway car to Mississippi Street Coach Yard, but insist they have exclusive contractual right to handle wheels moving from this stock pile at the wheel shop, when transported by motor truck, fork lift or when manually pushed.

The claimants do not specifically deny that these auxiliary stock piles are maintained at the points mentioned but merely assert a belief that such stock piles are not maintained in good faith. We are unable to find from the record any evidence that these auxiliary stock piles are used for the purpose of evading the provisions of Carmen's Rule 86. The essential question is when does control of the re-conditioned wheels pass from the Stores Department? It is at that time that the duties of material distributors come into being. While possession and control of the wheels is lodged in the Stores Department it is immaterial whether such control is exercised at a main stock pile or at one or more secondary stock piles, so long as such secondary supply is not maintained as a subterfuge. As we have noted, no evidence of an improper purpose is presented and we are therefore unable to find that the maintenance of these auxiliary stock piles is not in good faith. We must hold that the instant claim lacks support.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1961.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3699

Prior to February 4, 1957 the carrier recognized the carmen helpers' (material distributors) rights to handle the work in dispute. This fact, together with the fact that the carrier sought to use an agreement negotiated with an organization other than the statutory representative of the claimants to support its arbitrary action, refutes the majority's conclusion that "no evidence of an improper purpose is presented and we are therefore unable to find that the maintenance of these auxiliary stock piles is not in good faith." The carrier's action brought about a change in the working conditions of the claimants and is therefore in violation of the agreement.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink