Award No. 3736

Docket No. 3558

2-CofG-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when 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 the Carrier violated the controlling agreement on April 5, 1958 when it assigned Car Foreman N. H. Lawson to temporarily relieve Wrecker Foreman W. A. McRae, who was on vacation at about 3:30 A. M., on said date.

2. That accordingly the Carrier be ordered to additionally compensate Carman W. L. Barrineau the difference between what he was paid and what he should have been paid had he been used to temporarily relieve Wrecker Foreman McRae for the time in question.

EMPLOYES' STATEMENT OF FACTS: The Central of Georgia Railway Company, hereinafter referred to as the carrier, assigned Car Foreman Lawson to temporarily relieve Wrecker Foreman McRae, who was absent on vacation, between hours of 3:30 A. M. until Foreman Lawson was relieved from the wrecker assignment, to supervise the clearing of a derailment at or near Lakeside Park, which is near Macon, Georgia, on the date in question.

Carman W. L. Barrineau, hereinafter referred to as the claimant, was certainly available because he was called, and used, on his regular assignment as wrecker foreman. Claimant has been used on numerous occasions in the past to relieve the wrecker foreman on both straight time and on overtime hours and he certainly is qualified by having worked at various positions on the Macon wrecking crew, including that which he is now claiming.

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 of September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that the carrier violated Rule 32 of the controlling agreement, as amended, October 15, 1956, when it used Car Foreman Lawson to temporarily relieve Wrecker

There is absolutely no rule in the shop crafts agreement effective September 1, 1949, as amended, giving all foremen's overtime work to mechanics. Carrier has shown that it would be a gross miscarriage of justice to inflict a sustaining award upon it. Foremen have always performed such overtime work. Before they organized in 1950, they never got paid for such overtime, nor did the carmen claim the work — now that foremen do get paid, and at a very nice rate, the carmen have recently begun a campaign to take this away from the foremen. This is a fact which the employes cannot in truth deny.

The burden of proof rests squarely upon the shoulders of the employes. 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, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 5418, 2676, and others.

The claim is for a new rule to permit carmen to perform all overtime work in lieu of using foremen. 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. 7870, 7718, 7653, 7440, 7422, 7153, 7166, 7101, 7093, 7068, 6959, 6828, 6007, 5864, 4439, 4435, 2491, and many others.

SUMMARY

Carrier has proven beyond any doubt that

1. There is no rule or rules to support the claim.

2. The claim is in fact a request that the Board grant the petitioners a **new all-encompassing** rule. That under such facts in the past this Board has correctly held it is without authority to grant new rules, and

3. Since the claim clearly is **not** supported by the current contract on this property, the Board should not do other than render a denial award.

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.

The dispute grows out of the following factual situation, the Carrier assigned Car Foreman N. H. Lawson to temporarily relieve Wrecker Foreman W. A. McRae, who was absent on vacation between the hours of 3:30 A. M. until Foreman Lawson was relieved from the wrecker assignment, to supervise the clearing of a derailment near Lakeside Park, Georgia, on the 5th of April, 1958.

It is the contention of the claimant Carman W. L. Barrineau that he was entitled to the work, that he was available, and that he should be additionally compensated between what he was paid, and what he should have been paid had he been used to temporarily relieve Wrecker Foreman McRae for the time in question.

Our Award No. 3735 determines the issues presented herein.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.

DISSENT OF CARRIER MEMBERS TO AWARDS 3735 AND 3736

The majority, consisting of the Labor Members and the Referee, in our opinion failed to give proper interpretation to Rule 32 and proper consideration to the facts in the instant cases.

Rule 32 does not prohibit the use of a qualified foreman who is available so long as he is from the craft of those he is assigned to supervise. It is not the intent of Rule 32 to prevent other foremen within the same craft from filling vacancies caused by foremen laying off.

It is not reasonable to read into Rule 32 a requirement upon the Carrier to fill the place of a foreman, during temporary absence, with a mechanic who may not be sufficiently qualified by experience, judgment, and temperament to supervise other employes and in addition properly handle the other additional job requirements such as time keeping and material ordering without previous instructions when experienced and qualified foremen from the same craft are available.

The true intent of Rule 32 means that should a mechanic be used temporarily to fill a position as foreman, he is to be of the same craft of those he will be supervising.

The facts as set forth in the Carrier's orginal ex parte submissions clearly stated that a car foreman position was blanked on the dates claimed.

Furthermore, the majority has failed to properly consider item 2 of the claims after it had decided to sustain item 1 of the claims, and this neglect by the majority to properly consider both items of the claims more clearly illustrates the error of these awards.

For the reasons set forth herein, the Carrier Members believe the majority has erred in its findings and awards.

/s/ **P. R. Humphreys**

/s/ **H. K. Hagerman**

/s/ **David H. Hicks**

/s/ **William B. Jones**

/s/ **T. F. Strunck**