Award No. 3969

Docket No. 3704

2-L&N-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the Carrier violated the terms of the Agreement on and after November 13, 1958 in assigning Atlanta Joint Terminal Carmen and Coach Cleaners to service Georgia Railroad Train No. 1 at their Station facilities, Atlanta, Ga.

2—That accordingly an L&N Carman (Car Inspector) and Coach Cleaner be additionally compensated for each instance subsequent to November 22, 1958.

EMPLOYES STATEMENT OF FACTS: Georgia Railroad Train No. 1 arrives in the L&N Passenger Station at Atlanta, Georgia at approximately 5:30 P. M. each day.

Prior to November 13, 1958, the Georgia Railway removed their train No. 1 from the L&N Passenger Station to the Atlanta Joint Terminals Yard, a distance of approximately 3 miles, to be serviced. Since November 13, 1958, the Atlanta Joint Terminals Company has been sending a car inspector (carman) and a coach cleaner, daily, from their facilities to the trackage and property owned by the L&N, hereinafter referred to as the carrier.

The wrongful action of the carrier of having other than employes covered by the agreement perform these duties, was handled verbally without success and on January 21, 1959, a claim was instituted in favor of one carman and one coach cleaner for additional pay, retroactive 60 days.

This dispute has been progressed with the carrier up to and with the highest officer designated thereby to handle the matter, who consequently declined to adjust the dispute.

The Agreement, effective September 1, 1943, as amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the agreement between

Article 3 of the agreement covering occupancy of Union Station, Atlanta, Georgia, by the Georgia Railroad provides:

> "That in granting the Georgia Company the right to use the Passenger Terminal, the Nashville Company does not agree to
>
> . . . .
>
> (b) keep and maintain for it a round house, storage tracks, cleaning and/or repair tracks or other similar facilities, nor to
>
> (c) care for, clean, inspect or make repairs to its engines or cars,
>
> it being understood that all such services will be performed and all such facilities will be provided by it at its own expense."

POSITION OF CARRIER: There has been no violation of agreement between the Louisville & Nashville Railroad and its employes represented by the Brotherhood of Railway Carmen of America. The coaches were cleaned by Georgia Railroad employes in Atlanta Joint Terminals prior to adoption of the practice now in dispute. They are now cleaned by Georgia Railroad employes in Union Station. Contract with the Georgia Railroad covering use of Union Station provides that the Georgia Railroad will

> "(c) . . . . care for, clean, inspect or make repairs to its engines or cars. . . ."

The L&N Railroad lacks authority to tell the Georgia Railroad how its equipment must be maintained. Agreement between the L&N Railroad and its carmen contains no rule which would support the position now taken by the employes and their claim, therefore, should be denied. The owner of the equipment has not seen fit in this particular instance to allow L&N employes to clean the cars.

In connection with request of the employes that a car inspector be additionally compensated, the Georgia Railroad advises:

> "To begin with, a carman was sent with the coach cleaner, acting in the capacity of chauffeur, to carry him to the station, but the carman acted more or less in a supervisory capacity to see that the cars were cleaned and did not work whatever in the way of inspection of or repairs to the cars. When the coach cleaner was sent over in the morning, no carman was sent with him and no carman goes now."

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.

(Upon a consolidation this Carrier became bound by a contract between a predecessor railroad and the Georgia Railroad for the latter's use of the

Atlanta passenger station which now constitutes part of Carrier's facilities. The contract expressly provided that Carrier's predecessor did not agree to maintain cleaning or repair tracks or similar facilities for the Georgia Railroad, nor to "care for, clean, inspect or make repairs to its engines or cars, it being understood that all such services will be performed and all such facilities will be provided by it at its own expense."

However, in its Submission the Carrier states:

> "Prior to November 22, 1958, coaches of the Georgia Railroad were cleaned in the coach yard of the Atlanta Joint Terminals, Atlanta, Georgia. No cleaning was then performed in Union Station. It was then agreed that Georgia Railroad Train No. 1 would remain in Union Station and that an Atlanta Joint Terminals coach cleaner would be sent to Union Station to clean the coaches on this train."

It seems debatable whether the original provisions quoted above infer a ban against the performance of this car cleaning and inspection work on these premises now controlled by Carrier; if not the Carrier, having inherited the contract, could probably not have imposed such a ban. But if the original contract did inferentially forbid the work there, the modification by Carrier constituted its consent to the work performance on its premises, and therefore a violation of the Agreement.

It seems clear that the Employes are entitled to perform work within the Agreement which the Carrier orders to be done on its property or voluntarily permits to be done there.

For some time after the contract modification the Atlanta Joint Terminal's coach cleaner was brought in by a carman who is claimed also to have performed inspection work on the train; but for some time that work has been done, and is now being done, by Carrier's carmen.

Under these circumstances the coach cleaning as well as the inspection work is apparently being done on Carrier's property with its consent, and should therefore be performed by Carrier's employes if it continues to be done there.

Since the times involved are indefinite and would involve records of other carriers, there seems to be no basis upon which additional compensation can be awarded.

AWARD

Claim sustained without retroactive effect as to pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1962.

DISSENT OF CARRIER MEMBERS TO AWARD 3969

The majority has erred in the decision as found in AWARD 3969. It is certainly questionable if an award such as this can be enforceable upon the Carriers involved, because the Georgia Railroad (owner of the cars involved in this dispute) and the Atlanta Joint Terminal (whose employes performed the work involved in this dispute) were not made parties to the dispute. The respondent Carrier in this dispute (Louisville and Nashville Railroad) is simply charged with allowing others to perform work on tracks which it owns. The Organization conceded that the Carrier did not assign work on its property to the employees of another Carrier, therefore there can be no rule violation by the respondent Carrier.

The work involved in the subject dispute had been performed for sometime pursuant to a contract between the Carrier and the Atlanta Joint Terminal, and this contract was a part of a lease arrangement. There is a great deal of analogy between the instant dispute and disputes previously given denial awards on this Division, viz., 2803, 2823, 2912, 2998, 3133, and 3276, all of which involved work as a part of a lease arrangement.

We have had on many previous occasions awards which have served as guidelines and precedents, and these awards have found that such work as is reserved by the Agreement to the Carrier's employes can only be that which is within the Carrier's power to offer. See Third Division Awards 2425, 4353, 4945, 5578, 5774, 6210, 7194, 6861, 6346, 6066, 7840, 8076, and 8294. A sustaining award of the Third Division, No. 6861, was subsequently overturned in the Boos v. Railway Express Agency, Inc., case (W.D. So. Dak. 195)—153 F. Supp. 14, Aff'd. (C.A. 8,195), 253 F. 2d 896.

Rules 30 and 104 of the Agreement contemplate work which the Carrier controls and not work which is outside its area of control. The majority found that since the Carrier neither ordered nor paid for the service by the Atlanta Joint Terminal employes, there was no liability for wages to its own employes. For the same reasons, this dispute should have been dismissed.

The Organization has no right to dictate the terms of a contract between two railroad companies. (See Third Division Awards 643, 2425, 4353, and 5878.) Had the respondent Carrier's contract with the Atlanta Joint Terminal provided that the coach cleaning would be supplied by the Carrier, then the Organization would be entitled to the work.

Union Station in Atlanta, Geaorgia, is owned by the State of Georgia, which many decades ago leased to the N. C. & St. L. Railroad control over this Station. In turn, the N. C. & St. L. Railroad contracted to the Atlanta Joint Terminal the operational and management control of the Union Station, which serves several Carriers in addition to the L. & N. and the Georgia Railroad. When the N. C. & St. L. merged with the L. & N., all property of the N. C. & St. L. and the contract between the N. C. & St. L. and the Atlanta Joint Terminal became a part of the L. & N. With this change of ownership, the service operations continued as practiced prior to the merger. The L. & N. employes are now seeking this work simply because the Georgia Railroad cars are cleaned while setting on tracks owned by the respondent Carrier.

The Atlanta Joint Terminal has a contractual right to operate on the tracks in the area of Union Station which are owned by this Carrier.

Referee Whiting in Second Division Award 2998 found:

"the mere fact that the tracks on which the car was set out are owned by this Carrier does not entitle it or its employes to perform the repair service involved."

The Organization based its claim on the allegation that work performed on the L. & N. property belongs to L. & N. employes regardless of any contract or lease provision, and the majority so found, but in doing so has created an unreasonable and unfair situation involving Carriers in addition to the respondent Carrier.

For these reasons, we dissent.

P. R. Humphreys

F. P. Butler

H. K. Hagerman

D. H. Hicks

W. B. Jones