

Award No. 4153

Docket No. 3926

2-C&O-CM-'63

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement, particularly Rule 154, by assigning other than Carmen to repair station trucks at Charlottesville, Va. Passenger Station.

2. That accordingly the Carrier be ordered to compensate Carmen J. L. Compton, O. C. Rhodes and C. P. Waugh eight (8) hours at the applicable straight time rate of pay for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Co., hereinafter referred to as the carrier, maintains a force of carmen at Charlottesville, Va. to perform all work specified in Rule 154 as carmen's work. There are carmen employed at this point 24 hours a day, 7 days per week.

During the week of November 22, 1959, specifically November 23, 24 and 25, carrier assigned Bridge and Builders' Carpenter force employees to apply side frames to six station platform trucks. To accomplish this task it was necessary to assemble the pre-cut side frames and apply stake pockets to the sides of the trucks. The stake pockets were applied by drilling holes through the side rail of the truck and applying bolts.

Carmen J. L. Compton, O. C. Rhodes and C. P. Waugh, hereinafter referred to as claimants, are regularly employed at Charlottesville, Va. as carmen and stood first out on the overtime board on the dates said work was performed by Bridge and Builders' force employees.

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

The carrier has shown:

- (1). That none of the work for which claim is made was performed on November 22, 1959.
- (2). No repairs were made to the station trucks at Charlottesville, Va.
- (3). The work here claimed is not assigned to the Carman craft by their Classification of Work rule.
- (4). The work has been performed in the past by Maintenance of Way Employees, covered by a separate agreement and they should be made a party to the handling of this case before a decision can be rendered.

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.

Removable side frames consisting of horizontal wooden slats fastened to upright stakes, were assembled at Charlottesville by B&B carpenters, and placed on six station trucks, apparently after those carpenters had first fastened to the side of truck beds, metal brackets to hold the lower ends of the stakes. The slats, stakes and brackets had been made at the Maintenance of Way shops at Clifton Forge, but that work is not claimed here.

The contention is that the affixing of the brackets and the assembling and placing of the side frames constitutes "building and repairing * * * station trucks" and belongs to the carmen under Rule 154(a), the relevant portions of which are as follows:

"Carmen's work shall consist of * * * cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing * * * station trucks; * * * and all other work generally regarded as carmen's work."

The employes' position is that Rule 154 (a) clearly and specifically contracts the building and repairing of station trucks to carmen. But the clause relied upon does not say "building and repairing station trucks," or carpenter work in building and repairing station trucks;" what it says is "carmen's work in building and repairing station trucks." Under the preceding general clause quoted above "carmen's work" consists of certain specified items not applicable here "and all other carpenter work in shops and yards, except work generally recognized as bridge and building work." The final catch-all clause quoted above covers "all other work generally regarded as carmen's work."

Therefore to make out a case it is necessary for claimants to show affirmatively, either that this work on station trucks is "generally regarded as car-

men's work," or that it is not "generally regarded as bridge and building department work." The record does not prove such a case.

Appended to the Employees' Ex Parte Submission as Exhibit "A" is a letter signed by twelve carmen, to which the Carrier objects because it is dated February 18, 1961, about six weeks after notice of appeal to this Board and obviously cannot have been used in the handling of this claim on the property. In any event it does not state that this work has not been generally regarded as B&B work, but merely says; "if they have been doing this work here for many years, I am not aware of it."

Appended to the Employees' Rebuttal as Exhibits "B" and "C" are two further letters, dated May 8, 1961, and signed by fourteen carmen, to which the Carrier objects for the same reason, and for the further reason that if admissible at all they should under the Board's Circular No. 1 have been submitted as part of the Employee's Ex Parte Submission. But if admissible for consideration here they do not supply the necessary showing, for Exhibit "B" states, with reference to the fourteen signers, only that "some have applied stake pockets and sides;" and Exhibit "C", in reply to the Carrier's statement here and on the property that this work has been performed by B&B employes for many years without protest until the present claim, excuses the absence of prior protests on the ground that the Employees "were not aware that this work had been transferred to the B&B forces * * *." The record does not show that the B&B forces received this work by transfer from anyone else; but the quoted statement constitutes an admission that the B&B forces have been doing it. And as noted above, the fabrication of the necessary stakes, slats and brackets to make the removable sides and hold them on the trucks, is still not claimed by the carmen.

The record does not show that this work is "carmen's work in building and repairing * * * station trucks," or that it was reserved solely to them by the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4153

First of all we must take exception to the implication of the majority that it might have been proper to uphold the carrier's contention that under the Board's Circular No. 1 Employees' Exhibits "B" and "C" should have been submitted as part of the Employees' Ex Parte Submission. Under Circular No. 1 and Second Division Resolution of March 27, 1936 the Exhibits were properly appended to the Employees' Rebuttal.

The findings are very labored and ignore the fact that under the Railway Labor Act the labor relations on the railroads are to be governed not by the arbitrary will or whim of the management (as was done in the present case) or the men, but by written rules and regulations mutually agreed upon and equally binding on both.

The work involved was recognized as being carmen's work as far back as 1919 (See Docket MY-442 United States Railroad Administration, Railway Board of Adjustment No. 2, referring to Supplement No. 4 to General Order No. 27). "Section 6 of Article 1 of 'Supplement No. 4 to General Order No. 27' contains the following language, '. . . and all other carpenter work in shops and yards.' This covers all carpenter work in shops and yards as the work of carmen, excepting carpenter work in connection with the erection of and repairs on buildings." Thus Railway Board of Adjustment No. 2 in the foregoing language (Docket 2201), as well as in Dockets 1088 and 2199 interpreted the language to mean all carpenter work except that involved in the erection and repair of buildings. This work was consistently carried forward through the years from agreement to agreement up to and including the existing agreement and was likewise interpreted in Second Division Awards 1656 and 2506 to mean all carpenter work except that in connection with the erection and repair of buildings.

The very statement of the majority that "The record does not show that the B&B forces received this work by transfer from anyone else; . . ." is tantamount to admitting that the work belongs to carmen and is sufficient proof in itself that the claim should have been sustained.

C. E. Bagwell
T. E. Losey
E. J. McDermott
Robert E. Stenzinger
James B. Zink